

A
COLLECTION
OF
D E C R E E S
BY
THE COURT OF EXCHEQUER
IN
TITHE-CAUSES,
FROM
THE USURPATION TO THE PRESENT TIME.

VOL. II.

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CAREFULLY EXTRACTED FROM
THE BOOKS OF DECREES AND ORDERS
OF
THE COURT OF EXCHEQUER

(By the Permission of the Court),
AND ARRANGED IN CHRONOLOGICAL ORDER. WITH TABLES OF THE
NAMES OF THE CASES, AND THE CONTENTS.

BY
HUTTON WOOD,
ONE OF THE SIX CLERKS OF THE COURT OF EXCHEQUER.

IN FOUR VOLUMES.
VOLUME THE SECOND.

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1798.



A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
DURING
THE REIGN OF GEORGE THE FIRST.

ROGERSON *against* CLITHEROE.

Middlesex, 10th December 1714.

MICH. TERM,
1. GEO. 1.

THE bill stated, that in the year 1673 the plaintiff was collated unto the rectory and parish church of *Hanwell*, in the county of *Middlesex*, with the chapel of *New Brentford*, within the said rectory and parish of *Hanwell*, by the then *Bishop of London*, patron of the said rectory, and had induction thereupon; that it being usual for the rector of the said parish to provide a parson to officiate as curate in the said chapel of *New Brentford*, the plaintiff, upon his said induction, put in a curate to supply the cure there, and had ever since supplied the same by persons duly qualified; that the plaintiff and his predecessors have had and received all manner of tithes, both great and small, and all oblations, *Easter* offerings, and dues whatsoever, arising within the said parish of *Hanwell* and town of *New Brentford*, and the titheable places thereof; that the defendant, for twenty years past, had been a parishioner of *Hanwell*, and held several messuages and tenements there, which had been constantly stocked with cows, kine, sheep, horses, and other cattle; that the said cows and kine yearly produced milk, calves, sheep, wool, and lambs, the tithes of all which ought to have

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The rector of the church of *Hanwell*, with the chapel of *New Brentford* annexed, claims the tithes of the parish of *Brentford*, and states, that he had duly provided a curate to serve the said chapel, to whom he had assigned the small tithes and *Easter* offerings.

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been paid to the plaintiff in kind, or some composition made with, and paid to him for the same; that the defendant had also corn, grain, and hay, the tithes of which, the plaintiff admitted, he had received; that he had also great quantities of hens, ducks, geese, pigs, pigeons, and fish ponds, for which he ought to have paid yearly tithes in kind, or made a satisfaction for the same; that he ought also to have paid him *Easter* offerings for himself, wife, and children above sixteen years of age, and for his servants; that he also held gardens and orchards therein, producing yearly fruits and herbs; that he also depastured for hire several horses; and had honey, for which he ought to have paid tithes in kind, or made a composition for the same; which composition formerly used to be reduced to five pounds a-year; that the said composition and small tithes arising within the said chapelry the plaintiff usually allowed to his said curate; and that the defendant, taking advantage of the plaintiff's not demanding his said tithes and offerings, had refused to pay the same. The bill therefore prayed to be relieved.

The defendant, lord of the manor of *Hanwell*, says, that he is an inhabitant of *West Brentford*, which is a distinct parish, and not liable to pay tithes to the rector of *Hanwell*.

The defendant, by his answer, said, that he believed that about the year 1673 the plaintiff might be collated, by the *Bishop of London*, unto the parish and parish church of *Hanwell*, and duly inducted; but that he knew not that the chapel of *New Brentford* was within the said collation, or that it had been customary for the incumbent of *Hanwell* to provide a curate for *New Brentford*; and that he does not believe that the plaintiff is entitled to the great and small tithes arising within *New Brentford*. He further stated, that in the reign of *Henry the Eighth* the priory of *Hanwell* and chapelry of *New Brentford* belonged to THE CROWN; that *West Brentford* was called the *Parish of West Brentford*, and that it was so stiled and owned with relation to the priest who then served in the said chapel or church of *West Brentford*, from which time the said church had had churchwardens or chapelwardens, and other parochial officers, distinct from the parish of *Hanwell*, and had ever since continued to baptize, bury, and administer the sacraments, and that all other offices proper to a parish church had been exercised there; that the same had constantly been repaired by the parishioners of *West Brentford*, without any contributions from the rector or parishioners of *Hanwell*; and that the parson of the church or chapel of *West Brentford* had been maintained by the inhabitants thereof, and not by the rector or parishioners of *Hanwell*; that it was never known that any rector of *Hanwell* repaired any part of the said chapel; and that therefore small tithes were never paid by the inhabitants of *West Brentford* to the plaintiff, or to any of his predecessors, rectors of *Hanwell*. He admitted, that for twenty years past he had been an inhabitant there, and that during that time he had, by himself or tenants, held several lands in the parish of *Hanwell* and town of *West Brentford*, which were constantly stocked with cows, kine, sheep, horses, and

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and other cattle, but knew not the number or quantity of them, nor of his other small tithes; but he insisted, that no tithes were due for pigeons. He also insisted, that the plaintiff ought not, either as rector of *Hanwell*, or by any other title, to have any small tithes of any things titheable in the parish of *West Brentford*, or *Easter offerings*, from any of the inhabitants there. He said, that the minister of *West Brentford* was chosen by the inhabitants there, and not put in by the rector of *Hanwell*; and that he had, from time to time, presented or allowed the minister of *West Brentford* four pounds or five pounds a-year, which was more than the full value of his small tithes, and had contributed to the building of the minister's house. He further said, that he claimed the manor of *Boston*, in *Hanwell*, which formerly belonged to the priory of *St. Helen's*, which came to THE CROWN in the reign of *Henry the Eighth*, and was afterwards granted out to his ancestors; and he denied that he or his ancestors had ever paid any small tithes, or *Easter offerings*, to the plaintiff or his curate; and that for three years past he had withdrawn his voluntary contributions from the minister of the chapel. He insisted, that the plaintiff had no right to small tithes; but if he should have a decree for the same, then he submitted to account from the time he had withdrawn his contribution; and he said, that he believed his small tithes and *Easter offerings* did not exceed twenty shillings *per annum*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading an entry in a book entitled "*Bandock*," kept in the register's office of the *Bishop of London*, touching the rectory of *Hanwell*, with the chapel of *Brentford*, in the year 1335; and the entry of the collation of *T. Capper*, by *Bishop Bonner*, to the rectory of *Hanwell*, with the chapel of *Brentford*, out of another book kept in the said office; and upon reading the proofs in the cause, and on full debate, The evidence read.

IT IS ORDERED AND DECREED BY THE COURT, that the defendant shall account with and satisfy the plaintiff the values of the small tithes of the things titheable, which he the said defendant had within the parish of *Hanwell* and the town of *West Brentford*, or the precincts or titheable places thereof, and for *Easter offerings* due from the defendant for five years next before the filing of the bill. The tithes decreed.

And it is hereby referred to the deputy remembrancer (a) to state and report the same.

In pursuance of the said order, the deputy, on the fourth of *May* 1715, made his report, dated the seventeenth of *February* last, and reported the value of the small tithes twenty shillings *per annum*, and *Easter offerings* sixpence *per annum*, in toto five pounds, two shillings, and sixpence.

(a) JOHN HARDING. Esq. Deputy Remembrancer.

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It

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against
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It is ordered by the Court, that the said report be ratified and confirmed, with costs, but not with costs as to the examination after hearing.

DODD, Chief Baron.

BURY, Baron.

PRICE, Baron.

MONTAGU, Baron.

HILARY TERM
1. GEO. 1.

SHAW, Bart. against STYLES.

Cambridgeshire and Suffolk, 24th February 1714.

The lands called *Redmore and Halsee*, in the parish of *Lakenbeath*, in the county of *Suffolk*, are within the limits of *Bedford Level*, and liable to pay tithes to the grantees of the crown.

See vol. i. page 345. the case of Shaw v. Topping.

THE bill stated, that within the great level of the fens called *Bedford Level* and *Bullingbrook Fen* there were great quantities of marsh or fen grounds, overflowed with water, which were drained by act of parliament, and rendered good arable and pasture ground, upon and from whence great quantities of corn, grain, and hay, were and are yearly sown, mowed, and reaped, and titheable cattle fed thereon; that great quantities of the said drained grounds are extraparochial, and the tithes not payable to any church, chapel, or rectory, but are of right payable to THE CROWN; that her late majesty *Queen Anne*, by letters patent, dated the ninth of *March*, in the eleventh year of her reign, granted all the extra-parochial tithes (except six hundred acres demised to *W. Beecher*) to the plaintiff for thirty-one years, whereby he is entitled to the said tithes, or to some composition for the same; that the defendants, at the time of the said grant, were, and still are, owners and occupiers of divers extraparochial lands within the said fens, and had cut, carried, and inned, grain and hay to a great value, and had kept cattle and bred lambs, and had other titheable things, without setting out the tithes thereof, or making any compensation for the same; that at the time of the grant, and ever since, they had also occupied seven hundred acres, called *Redmore*, lying in the parish of *Lakenbeath*, in the county of *Suffolk*, in *Bedford Level*, being extra-parochial, and had cut thereon oats, cole seed, and hay, and fed cattle, the tithes whereof amounted to a considerable sum. The bill therefore prayed to have a discovery of the lands they held; the corn, &c. they had carried away; and payment decreed of their said tithes.

The defendants said, that they believed that great quantities of the said fen grounds are extra-parochial; but that they never knew any tithes or duties to have been paid for the same; and they admitted, that her majesty *Queen Anne* had made such grant to the plaintiff, as was stated in the bill.

The defendant *Rolfe* said, that he occupied two hundred and forty acres, called *Redmore*, and held the same of the defendant *Styles*,

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Styles; but he denied, that he knew or believed that any part thereof lies in *Bedford Level*, *Bullingbrooke Fen*, or *Munson's Level*, or that they were ever overflowed, or drained, or recovered from the waters; but said, that they were part of the lands belonging to the abbot of *Fotheringhay*, and that they are damnified by the drains of the fen lands. He admitted, that the said lands are not within any parish or chapelry.

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against
STYLES.

The defendant *Styles* said, that he had not, since the plaintiff's grant, occupied any lands in the level or fens; and he denied that the said parcels of land, or any part thereof, do lie in or are part of the fens drained by any act of parliament, but always were an estate in fee, and heretofore parcel of the possessions of the abbot of *Fotheringhay*, and as such exempt from the payment of tithes; that the lands, called *Redmore*, are not only not within any parish or chapelry, but not within any county, hundred, or wapentake belonging to which the works of draining do extend, but that *Haltree*, which the defendant *Rolfe* occupies, is within the said level or fens.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and on reading a grant of her late majesty *Queen Anne*, dated the twenty-fourth of *March*, in the eleventh year of her reign, and several proofs taken in the cause, and the defendants answer, and hearing what could be alledged,

The Court declared their opinion to be, that the two several parcels of land in the answer mentioned, called *Redmore* and *Haltree*, are parcel, and do lie within the said level, called *Bedford Level*, and are titheable and ought to pay tithes to the plaintiff, by virtue of and under the said grant to him made by her said late majesty.

IT IS THEREFORE ORDERED BY THE COURT, that the defendant *Rolfe* do account with the plaintiff accordingly for his tithes due; and that it be referred to the deputy remembrancer to take and state the said account.

BURY, *Baron*.
PRICE, *Baron*.

WEBB against GOSDEN.

Surry, 23d February 1714.

HILARY TERM,
2. GEO. 1.

THE bill stated, that for seven years the plaintiff had been, and still was, lessee of all the great and predial tithes of *Wonerth*, in the county of *Surry*, by lease under *Mrs. Duncombe*; that the defendant, for the same time, had been owner and occupier shall make the mowing into *grass cocks*, and the rector make it into *hay* on the land.

WERE
against
GOLDEN.

pier of divers parcels of land, meadows and pastures, lying therein, and had wheat, oats, barley, pease, beans, hay, and other titheable matters, and had inned the same; that at the last hay harvest he had positively refused to let the plaintiff have the tithe hay, according to the custom in the said parish. The bill therefore prayed a discovery of the quantities and values, and satisfaction for the same, and an injunction to stay the defendant's proceedings at law.

The defendant admitted the plaintiff to be lessee of the tithes in question, and denied that at the last harvest he had refused to let the plaintiff have his tithe hay; but that, on the contrary, he had, according to the custom in the parish, made the grass, when cut, into *grass cocks*, and set out the tithe thereof, and had sent the plaintiff word to come and see it fairly tithed. He also denied positively, that the custom is for the proprietors of the tithes of hay to make the tithes into hay on the lands of the owners or farmers; but that, on the contrary, it is to be taken and carried off the grounds, and to be made afterwards, or to be done with as the parson or lessee of the tithes shall think fit.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the several proofs in the cause,

IT IS ORDERED BY THE COURT, that the defendant do forthwith come to an account for the tithes in question; and it is referred to the deputy to take the said account; and that the injunction be continued until further order of the Court.

In pursuance to the said order, the deputy, on the twenty-ninth of November 1715, made his report, dated the nineteenth instant. Upon reading the said decree and report without exceptions, it is ordered, that the same be and is hereby ratified and confirmed; and that the said defendant do pay to the said plaintiff twenty shillings for the value of his tithe hay reported due, with his costs to be taxed.

TH. BURY.
RO. PRICE.
JA. MONTAGU.

EASTER TERM
1. GEO. 1.

HUGHES against ENGLEFIELD.

Berkshire, 12th May 1715.

The vicar of the parish of *Sunning*, in *Berkshire*, is entitled to the small tithes of the manor of *Earlywates*, of the messuage called *Early Bartholomew*, of the farms called *Beach Lands* and *Wheat Innings*, and of all other lands in the said parish and chapelry of *Earlywate Knights*, excepting the tithes of corn, summer apples, hay, *silva cedua*, mills, and fish.

THE bill stated, that about the year 1711 the plaintiff was instituted and inducted into the parish church of *Sunning*, in the county of *Berks*, and had ever since officiated and performed the cure there as vicar, and become entitled to all small tithes

tithes

tithes of milk, calves, lamb, wool, pigs, poultry, flax, hemp, honey, hops, wax, teasell, woad, fruit, garden stuff, turnips, beans, pease, and all other tithes, except the tithes of corn, summer apples, hay, *silva cedua*, mills, and fish; that the defendants, the parishioners and inhabitants of the said parish, from the first of June 1711 to Michaelmas 1712, had severally kept and milked divers milch cows, and had calves fallen, and had kept sheep, from which they had wool and lamb, and had agisted cattle, and had several other titheable matters and things, for which they ought to have paid the plaintiff tithes, or made him some compensation for the same, but which they had refused to do, setting up *moduses* and other pretensions. The bill therefore prayed relief in the premises.

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against
ENGLEFIELD.

The defendant *Englefield* said, that he was lord of the manor of *Earlywhite Knights* within the said parish; that in the said manor there was a free chapel, founded beyond the time of memory, by some of the defendant's predecessors, and endowed with three pightles of arable land in *Early Field*, and with all the tithes arising within the said manor; that the lords of the said manor were patrons, and presented the incumbents of the said chapel to the *Bishop of Salisbury*, in whose diocese the said chapel stood; that one *Hugh Beke* was, on the fourteenth of December, in the year 1538, presented, by the lord of the said manor, to *Nicholas*, then *Bishop of Salisbury*, and by him instituted into the said chapel, as within his diocese; that in the reign of *Edward the Sixth*, the said chapel, with its glebe, tithes, and appurtenances, was, by act of parliament, vested in THE CROWN, and afterwards granted out by *Henry the Sixth* to *H. Rolstead* and *W. Moore*, and their heirs, by the name of "the late free chapel of *Earlywhite Knights*, with the three pightles of land in *Early Field*; and also all those tithes of grain, wheat, and hay, and all those his tithes whatsoever arising from the said manor of *White Knights*, and the hereditaments thereunto belonging;" that the said *Rolstead* and *Moore's* estate in the said chapel is duly vested in him; that during the time in the bill mentioned, he did not hold any lands in the said parish, except such as lie within the said manor, and are part of the *Demesnes*; and that he and his predecessors, lords of the said manor, by virtue of the said grant, were not accountable for any tithes there; and that, as they had never been demanded, he had kept no account thereof. He admitted, that the plaintiff had been inducted into the said vicarage; but denied, that he or his ancestors had ever agreed with any vicar of the said parish for their small tithes, or that he had offered to pay the plaintiff anything for the same; and insisted, that the same do belong to him by virtue of the said patent; that his father and his ancestors, in regard that the tithes of the said manor were secularized, were the larger in their free will offerings to the vicars of the said parish, and

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ENGLEFIELD.

sometimes gave them fifty shillings or forty shillings a-year, which he had offered to the plaintiff, who had refused to accept of the same.

The defendant *Le Grand* admitted, that the plaintiff was inducted into the said church; and said, that he held a capital messuage, together with arable, meadow, coppice, and two shawes in the said parish, all lying within the rectory or free chapelry of *Early Bartholomew*, in the parish of *Sunning*; that the same was an ancient rectory and free chapel; and that the owner thereof, and not the vicar, by common right, endowment, or otherwise, had always received all manner of tithes of the said premises; and that he had paid the same, for the time demanded by the bill, to the owner of the said chapelry. He also said, that he was seised of a farm and lands in the said parish, called *Beach Lands* and *Wheat Innins*, for which he paid a *modus* of one pound, fourteen shillings, to the vicar, in lieu of the small tithes for that farm and lands. He also said, that he was seised of a farm, called *Hatchgate*, for which he paid a *modus* of six shillings a-year, in lieu of small tithes. He averred, that he had tendered to the plaintiff the said *moduses*, which the plaintiff had refused to receive; and he denied, that any privy tithes were paid in kind to the vicar for those lands, or out of any other lands in the said parish; and he admitted, that he had not paid or tendered his small tithes to the plaintiff.

The rest of the defendants, by their answers, admitted the plaintiff's induction, and set forth the several farms and lands held by them, and the quantities and value of their tithes, and set up several *moduses* for the same; and all the defendants denied, that any tithes in kind had been ever paid to the vicar of the said parish, but only the *moduses* and sums of money set forth in their several answers.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and the cause, coming on the fifth instant, was adjourned over to this day; and upon reading an institution to the said chapel of *White Knights*, in the year 1538, by the then *Bishop of Salisbury*; a certificate of the commissioners made pursuant to an act of parliament passed in the second year of *Edward the Sixth*, for dissolving chantries; the auditor's particular thereof; an inrollment of the grant of the said chapel of *White Knights*, made to the said *Rolfstead* and *Moor* by *Edward the Sixth*; the inrollment of the grant of the manor and chapelry of *Early Bartholomew* to *Cupper* and *Trevor*, in the third year of *Edward the Sixth*; an augmentation of the vicarage of *Sunning* out of the *Dean of Salisbury's* register; and the proofs in the cause,

THE COURT disallowed the exemptions insisted on by the defendants *Englefield* and *Le Grand* in discharge of the small tithes

tithes demanded by the bill; and also the several sums of money insisted upon by the defendants in their respective answers to be paid as *modus* to the vicar of the said parish in lieu of tithes; and accordingly ORDERED the defendants respectively to account with and satisfy the plaintiff the values of the small tithes demanded by the bill, and also *Easter* offerings; with costs; and referred it to the deputy to take the said account, and to tax the plaintiff's costs (a).

HUGHES
against
ENGLEFIELD.

S. DODD.
THO. BURY.
R. PRICE.

(a) See another cause, *Hughes v. Billingham*, post.

DAVIES against PRICE.

Montgomeryshire, 23d May 1715.

EASTER TERM
1. GEO. I.

THE scope of the bill was, to demand of the defendants all the tithes, as well great as small, arising, &c. upon several messuages, tenements, and lands, lying within the township of *Trewylan*, in the parish of *Llanfaufrad* in *Mechnon*, in the county of *Montgomery*, occupied by the defendants for three years past, the plaintiff *Davies* claiming three parts in four of the said tithes within the said parish, by indenture of lease, dated the twenty-fourth of June 1711, from *William*, then *Bishop of St. Asaph*, the commendatory rector of the said parish, for twenty-one years, at one hundred pounds a-year; and the plaintiff *Reynolds* intitling himself to the fourth part, and all the rest and residue of the great and small tithes, as vicar thereof, of which parish he had been vicar for seven years past. The bill charged, that the defendant *Price*, for the time mentioned in the bill, had held and occupied a capital messuage, with several lands in *Trewylan*; that the other defendants had also held and occupied several other lands, from which they had corn and grain, and other titheable matters; and that they had not set out or paid their tithes, or made any satisfaction for the same, they pretending an exemption of a *modus*.

The plaintiffs, as lessees of the tithes of *Llanfaufrad*, in the county of *Montgomery*, claim all tithes, great and small, in kind.

The defendants admitted, that the *Bishop of St. Asaph* was commendatory rector of the said parish; that he had made a lease of three parts in four of the tithes of the said parish to the plaintiff *Davies*; and that the plaintiff *Reynolds* was vicar of the parish.

The defendants admit the plaintiff's title;

The defendant *Price* said, that during the time in the bill mentioned, he was seised in fee of, and had occupied, a capital messuage and lands heretofore belonging to *Trewylan*; that the defendant *Roberts* also held a tenement and lands there, as his tenant; that the defendant *Tannett* also occupied one other tenement therein; and they said, that no tithes, either great or small (except *Easter dues*, and *laetuals*, and tithe lambs), or any compensation for the same, ought to be paid to the plaintiff; but

but say, that tithes are due to the defendant *Price*, as owner of certain lands in *Trewylan*, excepting *Easter* offerings, and the tithes of milk and lambs.

that

DAVIES
against
PRICE.

that the tithes for the said tenements, except as aforesaid, had been, time out of mind, paid and answered to the other defendant *Price*, and his ancestors, owners of his said capital messuage aforesaid.

All the other defendants said they held cottages and lands in the said township, and had paid their tithes to the defendant *Price*, except as aforesaid.

Price sets up *modus*.

The defendant *Price* set up several *modus*es, amounting to fix pounds, two shillings, and sixpence, for tithe lambs, &c. which, he said, had been tendered to the plaintiffs and refused.

The plaintiffs replied; the defendants rejoined; and several witnesses were examined on both sides, and upon reading the proofs, and the defendants answer;

The tithes of the lands in *Trey-lan*, except as aforesaid, decreed to the plaintiffs.

IT IS ORDERED BY THE COURT, that the defendants do severally account and satisfy the plaintiffs for the tithes of their several messuages, lands, and tenements lying in *Trey-lan*, demanded by the bill according to their several interests therein, viz. the defendant *Price* for all tithes, both great and small, for his capital messuage and lands aforesaid; the defendants *Roberts* and *Tannett*, for all tithes, both great and small, of their said several tenements, (except *Easter dues*, *hactuals*, and tithe lambs; and the other defendants for all their small tithes, for their tenements in the said township; which account is to be taken by the deputy remembrancer.

EASTER TERM,
1. GEO. 1.

NICHOLAS against AUSTEN.

Surry, 19th May 1715.

The tithes of pease and beans set, drilled, or sowed in rows or ranks, whether the land was ploughed or dug, which are hoed or weeded with the hand, in a garden-like manner, are vicarial tithes.

S. C. 2, Bro. P. C. 31.
See vol. 1, page 523. *Nicholas v. Elliot*, 1 Feb. 1710.

THE bill stated, that the plaintiff, for ten years past, had been, and still was, vicar of the vicarage and parish church of *Shalford*, in the county of *Surry*, with the chapelry of *Bremley*, thereunto annexed; and, as such, was, by endowment, or otherwise, lawfully entitled to all manner of *small tithes* and *dues* arising therein; that the defendants, during the said ten years, had severally held and enjoyed divers pasture lands and other grounds within the said parish, and had kept cows which had calves, and sheep which had wool and lambs; and that they also had hops, carrots, turnips, pease, beans, wood, and other articles and things titheable to the plaintiff; that, by the constant usage of the parish, the vicar ought to have all the tithes of pease and beans set, drilled, or sown in rows or ranks, in a garden-like manner, and cultivated with the hoe, or weeded with the hand, or some *modus* or composition in lieu thereof; that the defendant *Austen* pretends that he is impropiator of the said parish, and entitled, by some deed, to the tithes of pease and beans so drilled and sowed, and that the same do not belong to the

the plaintiff, as formerly, for that the husbandmen and farmers now only plough the ground where such pease and beans are set, instead of plough-trenching or digging it with a spade after the plough, in the manner formerly used in manuring the said grounds, and therefore, that the tithes of pease and beans so set after the plow, are to be accounted *great tithes*, although they are set in rows and ranks and managed with a hoe, or weeded with the hands as formerly; that the defendants, during the said ten years, had sowed great quantities of pease and beans yearly in rows, and managed them with the hoe, or weeded them with the hand; that the said defendants had also had great quantities of carrots, the tithes of which they refused to pay, although they know the plaintiff's right thereto by the decree of this court. The bill further stated, that the defendants *Eames* and *Wilkins*, pretend that their lands are rented of the *Austens*, who say that the same are *ancient demesne* or *glebe lands*, belonging to the parsonage of *Shalford*, and, as such, are exempted from the payment of tithes; which the plaintiff denied, and prayed a discovery and satisfaction for the said tithes.

NICHOLAS
against
AUSTEN.

The defendant *R. Austen* said, that, for ten years past, he had been seised in his *demesne as of fee*, of the impropriate rectory of *Shalford*, and chapelry of *Bromley*, (save that his mother had an estate for life, and a jointure in part of the said glebe tithes) and that the plaintiff, during the same period, had been vicar thereof, and entitled to all *small tithes*, save only of the *glebe lands* belonging to the rectory, out of which neither the plaintiff or his predecessors was or were ever entitled to any manner of tithes. He insisted, that pease and beans set, drilled, or sowed in rows or ranks, or cultivated with the hoe, or weeded with the hand, gotten, grown, or raised in the common fields or arable lands within the said parish or chapelry, in any manner or sort of husbandry whatsoever, are and ought to be esteemed *great tithes*; for that the general way of husbandry is, and for several years past had been, to set, drill, or sow the same in rows or ranks, and to cultivate them with the hoe, or to weed them with the hand, and that the change in the mode of husbandry, or the different way of getting pease, beans, wheat, and other grain, was not or ought not to alter the nature of the tithes, or change *great tithes* into *small tithes*.

The other defendants also denied, that the plaintiff, or his predecessors, have, by usage or custom, ever had or enjoyed the tithes of pease or beans, set, drilled, or sowed in rows or ranks, in a garden-like manner, and cultivated with the hoe, or weeded with the hand; or any rate, *modus*, or composition, save when they have been sowed in gardens, or for some years when some small parcels of lands in the common fields, or other arable lands, have been digged with spades, and trenched, and set with pease and beans, or any kind of roots, and that then the plaintiff had taken

NICHOLAS
against
AUSTEN.

taken a composition of three shillings and fourpence an acre, in lieu of tithes of such small parcels of grounds soddigged with spades and set with pease and beans, and that the said rate was paid and permitted to be paid by the impropiator, because such small parcels were esteemed and reputed to be in the nature of gardens; but they insisted, that the course of husbandry having of late so far changed as to occasion great quantities of land to be dug with spades or trenched, the pease and beans set and planted therein are to be accounted great tithes, and belonging to the impropiator; and that in an action of trover, brought by *R. Elliott* against the plaintiff, respecting his right to such tithes, a verdict was given that the said tithes belonged to the impropiator. The defendants also insisted, that they ought to enjoy the glebe lands free of tithes, for that the vicarage never was endowed with any tithes whatsoever upon the said glebe lands; and the defendants *Austens* averred, that all the lands they had set forth as glebe lands were the glebe lands anciently belonging to the said parsonage.

The defendant *Street* said, that he believed the plaintiff was entitled to the tithes of wood, and of pease and beans when planted in rows, and hoed, or when carrots were planted between them, hand weeded, or where the spade is used with the plough in turning the ground; but that since the spade had not been used with the plough, including a period of about forty years, the impropiator had taken such tithes.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides, and upon reading the depositions of several witnesses, taken in the cause, and the decree made in the cause of *Nicholas v. Elliot* (a); a deed dated the twenty-first of *October* 1650; and a deed dated the twentieth of *December*, forty-fourth of *Elizabeth*, THE COURT ordered the defendants to account for the value of the tithes of all such pease and beans as had been set, drilled, or sowed in rows or ranks, as well after the plough as after the spade, which are hoed or weeded with the hand, in a garden-like manner in the common fields, or elsewhere, on the lands in the defendant's possession within the said parish or the titheable places thereof, during the time in the bill mentioned, and also to account for the value of all small tithes by them severally and respectively had during the same time; the deputy remembrancer to take the said account and report the same.

The defendants, on the twenty-fourth of *January* 1717, appealed from this decree to the house of lords; and after hearing counsel on the appeal, IT WAS ORDERED AND ADJUDGED, that the same should be dismissed; and the decree therein complained of affirmed.

(a) See this case reported, ante, vol. 1. page 523.

CHAPTER against MICHELL.

*Cornwall, 15th July 1715.*TENN. TENN.
I. GRO. I.

THIS cause came on to be heard on the twenty-third of February last. The scope of the bill was to demand of the defendants the third part of the tithes of hay, and all the tithes of wool, lamb, hops, calves, pigs, agistment of dry and unprofitable cattle, and other small tithes arising, &c. upon the defendants lands in the parish of *St. Gorran*, in the county of *Cornwall*, from *Michaelmas 1710*; the plaintiff entitling himself to those tithes as vicar and incumbent of the said parish.

The defendants admitted the plaintiff to be vicar of the said parish, and entitled, according to ancient and immemorial custom, to a pecuniary satisfaction in lieu of his third part of the tithe of hay, and of all the tithes of lambs, hops, and other small tithes; but they insisted that neither the plaintiff nor any of his predecessors were entitled to the said tithes in kind; that they had never compounded with the plaintiff for their said tithes, but that, for several years, they had paid and are still ready to pay to the plaintiff, for his part of their tithe hay, and for the small tithes, according to an ancient custom which prevails in the said parish, and which had been uniformly agreed to and adopted by the plaintiff and his predecessors, time out of mind; that the said custom is, that every person holding any messuages, lands, tenements, meadows, gardens, hop gardens, or orchards within the parish of the quantity of one acre or more, and being also seised of the inheritance thereof, or possessed thereof for a term of years determinable upon one life or lives, have, time out of mind, paid yearly to the vicar, by quarterly payments, in lieu of the vicar's part of the tithe hay, and of the tithes of all other titheable matters arising on the same payable to the vicar there, five pence, in money only, and no more, for every acre of such land, and proportionably for every greater quantity of ground; and that every person holding at rack rent any messuages, lands, tenements, meadows, gardens, hop gardens, or orchards within the said parish is, by the custom aforesaid, to pay yearly, by quarterly payments, to the vicar of the said parish, in lieu of the tithes aforesaid, ninepence in the pound, and no more, according to the rent payable to the landlord thereof, and proportionably for any less rack rent, then a pound; and also that every person holding a messuage, garden, hop garden or other ground within the said parish, which is not one acre, is to compound with the vicar for the small tithes thereof, or else to pay him tithes in kind.

A custom that all freeholders shall pay 5d. and all leasehold. 10s. 9d. an acre quarterly to the vicar, in lieu of tithes, and that those who do not hold more than one acre, shall pay tithes in kind, is unreasonable and void in law.

See vol. 1. Beam v. Lee, p. 537.

The

SHAPTELL
against
MICHELL

The plaintiff replied; the defendant rejoined; and witnesses were examined, and the cause coming on to be heard as aforesaid, the plaintiff's counsel strongly contended that the said pretended usages and customs are unreasonable and not sufficient in law to bar the plaintiff of his tithes in kind.

The Court thereupon ordered a case to be made and agreed to by counsel on both sides; which case was accordingly drawn out, as before set forth in the bill and answer *verbatim*, in which it was admitted the other third parts of the tithe hay, are payable to the impropriators in kind, and that the question was, whether the *modus*, as set forth in the answer, be good in law, or not?

The cause now came on to be heard upon the said case, and THE BARONS having been attended therewith; and on full debate of the matter and consideration had thereon.

THE COURT were unanimously of opinion and declared, that the customs and *moduses*, set forth in the answers, are unreasonable and contrary to law, and that therefore the plaintiff ought not to be thereby barred of receiving his tithes demanded by the bill, in kind.

IT IS THEREUPON ORDERED AND DECREED, that the defendants do satisfy and account with the plaintiff for the third part of the tithe hay, and also for all the tithes of wool, lambs, hops, and all other small and minute tithes arising, happening, and renewing, upon their respective lands within the said parish of *St. Gorran*, during the time in the bill set forth; and it is referred to the deputy remembrancer to take and report the same.

SAM. DODD.
THO. BURY.
RO. PRICE.
JAS. MONTAGU.

TRIN. TERM,
1. GEO. I.

TURNER against GELDART and Others.

Yorkshire, 20th July 1715.

The plaintiff, a pauper, claims tithes as rector and vicar of *Coverham*, in *Yorkshire*, stating, that in the year 1708 he was regularly inducted to the said benefice.

THE plaintiff, as rector and vicar of the parish church of *Coverham*, in the county of *York*, and diocese of *Chester*, filed his bill in this court, stating, that he, in the year 1708, was duly presented and inducted thereto, and became lawfully entitled to all tithes both great and small, and to all oblations, obventions, and other vicarial profits, from the inhabitants and occupiers of lands within the said parish and the titheable places thereof; that the defendants *Smith*, *Wray*, and *Weston*, being inhabitants and farmers therein of divers messuages, lands, and arable, meadow, and pasture grounds, and wood ground, had, reaped

reaped, cut down, and converted to their own use wheat, barley, oats, and other grain, and hay, grass, wood, and underwood, without paying the tithes thereof, or making any composition or satisfaction to the plaintiff for the same; that they had also kept divers milch cows and calves, and had lambs, wool, hemp, flax, and several other things for which small tithes were due, but which they had detained from him on a pretence that tithes had never been demanded by any person who had officiated in the said rectory, but that the persons so officiating had been contented to receive such allowances as the respective inhabitants thought proper to give them. The bill further stated, that for forty years before the plaintiff's presentation, no person had been legally presented to the said rectory, which was occasioned by some inadvertency or connivance of the commissarys of the respective bishops of the said diocese, and, that by means thereof, the farmers and occupiers had always found and provided such persons as they could awe and influence to comply with such maintenance as they should provide for them, so that they became dependants on the precarious bounty of the parishioners who had treated the pastors with great contempt and neglect, and now contended that they had the privilege of continuing the same practices. The bill further stated, that the said farmers and occupiers likewise pretended that they ought to be exempt from the payment of tithes within the said parish, the lands being parcel of some ancient monastery, and so discharged from the payment of tithes. But the plaintiff insisted, that by virtue of the statute of *Henry the Eighth*, he is entitled to the arrears of tithes due from the time of the last incumbency; that the right of the crown to the said rectory is not destroyed; and that he ought not to be barred or precluded from receiving the tithes thereof, by any neglect or length of time that had intervened; that pursuant to the statute made in her late majesty's reign, "for the more speedy recovery of small tithes," he had summoned several of the inhabitants of the said parish before the justices, to shew cause why they refused to pay the small tithes to the plaintiff, amongst whom were the defendants *Geldart* and *Reynardson*, who thereupon gave bond to pay such damages as the plaintiff should recover; that the plaintiff brought an action at law, but was nonsuited, and that the defendants recovered costs, and obtained a bond from the plaintiff and a note for the payment of the said costs. The bill therefore prayed a discovery of the said bond and note, and that they may be delivered up to be cancelled; that the defendants may account to him for his tithes; and that an injunction may issue to stay proceedings on the bond.

The defendants *Wray*, *Smith*, and *Watson* said, that they believed the plaintiff was presented to the rectory and vicarage about the time mentioned in the bill; but they insisted, that the

TURNER
against
GELDART

That no person had for forty years before his presentation been inducted into the said church.

and that his title to the tithes was not impaired by such neglect.

The defendants insist, that their lands were parcel of the abbey of *Coverham*, and the crown.

vested by 31. Hen. 8. in plaintiff

TURNER
against
GELDAERT

that they were
granted out by
Q. Elizabeth, and
that tithes are
due to the gran-
tees.

nothing on this
point at law
was decided
by the court
in this case
but the court
was divided
on the point
of law.

That there is a
modus of 4s. a
year in lieu of
tithe hay;

and another *mo-
dus* of 9s. a year
in lieu of corn
and other tithes.

plaintiff, notwithstanding such presentation, had not any right to receive any great tithes, small tithes, oblations, obventions, or other profits belonging to the said rectory, from them or any other of the inhabitants in the said parish, either from the time of the last incumbent, or from the time of the plaintiff's institution and induction thereto; for that the abbot of the abbey of *Coverham*, before the dissolution thereof, was seised in his *demesne as of fee*, in right of his said abbey, of and in the said parish church of *Coverham*, and of all glebe lands, tithes, oblations, obventions, fruits, and profits to the said rectory belonging; that by virtue of the statute 31. *Hen. 8. c. 13.* the said king became seised of the said rectory and abbey, in his demesne in right of THE CROWN; that afterwards *Queen Elizabeth*, became seised of the same, who, by virtue of her letters patent, dated the nineteenth of *June*, in the fourth year of her reign, granted the said rectory and all tithes and profits whatsoever belonging to the same to *Thomas Allen* and *J. Freeman*, to hold the same to them and their heirs for ever, by virtue whereof they became seised of the said rectory, tithes, and profits; that no manner of tithes, great or small, since the dissolution of the said abbey, had been paid to any incumbent of the said parish by any landholder, inhabitant, or occupier of land in the said parish, or the titheable places thereof, but that they were constantly paid, since the dissolution, to the kings and queens of *England*, or to their farmers, until the aforesaid grant of *Queen Elizabeth*, and since then to the said grantees or to such persons as have been owners, impropiators, farmers, or tenants of the said rectory; and that therefore they ought not to be paid to the plaintiff.

The defendant *Watson* further said, that he had been an inhabitant and occupier of arable, meadow, and pasture lands in the said parish, for forty years past, and that for the meadow ground, time immemorial, there had been paid the annual sum of four shillings, as a *modus* or composition in lieu of tithe hay, and that tithes in kind of corn and other things, are of right due and paid to the owners and farmers of the said rectory, and therefore he had kept no account, but insisted that, having paid for all his tithes to those persons to whom they were due, he ought not to be called on by the plaintiff to pay the same.

The defendant *Smith* said, that he had been an inhabitant for seventeen years past, and had occupied a farm and lands under *Sir H. Smithson*, and had enjoyed several lands and tenements in his own right, and that, time immemorial, the farm which he held in his own right, had yearly paid to the owner of the said rectory, the yearly sum of nine shillings, in full satisfaction for all tithes of corn, hay, and all other tithes, both great and small, and in full of all oblations, obventions, and other profits, due from the occupiers thereof, (*Easter reckonings* excepted); that the lands, &c. which he occupied under *Sir H. Smithson*

Smithson did consist of meadow and pasture ground, and he insisted, that at the dissolution of the said abbey, the said lands belonged to the abbot, and that they were therefore discharged and freed from the payment of tithes.

TURNER
against
GELDART.

The defendant *Wray* answered to the like effect, and said, that he held land also, under *Sir H. Smithson*, and that no tithes in kind had ever been paid for the same.

The defendants admitted, that if no person was instituted and inducted therein since the dissolution, divine service, when performed, was by such person as the owners of the said rectory did procure, and that a competent salary was allowed to him; and they averred that no tithes had ever been demanded of the parishioners, and that the plaintiff had no right to demand the same; for that all tithes and oblations belonged to the impropiators, or to their agents, and not to the plaintiff. They admitted that the plaintiff had convened several persons before the justices; and that the defendants *Geldart* and *Reynaldson* had given and obtained bonds and notes as stated in the bill.

That the grantees of the crown have procured a person to perform divine service, who had received a stated salary.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the defendants part only; and on reading a copy of a record out of the augmentation office, it appeared that upon the dissolution of the monasteries, the *Abbey of Coverham* came in the hands of THE CROWN; also on reading a copy of the letters patent dated the nineteenth of *June*, in the fourth year of *Elizabeth*, it appeared, that the rectory and all the tithes, both great and small, and all oblations, obventions, and all other tithes and dues whatsoever, for the considerations therein mentioned, were granted to *T. Freeman* and *T. Allen*, and to their heirs for ever, reserving only the advowson of the church; and on reading the depositions of *G. Wray*, and hearing what could be alledged by counsel on both sides, and on full debate,

The evidence read.

See 9. Vin. Abr. 55.

IT IS ORDERED BY THE COURT, that the defendants *Watson*, *Smith*, and *Wray*, who were brought to hearing, shall be and are hereby absolutely dismissed of and from the bill without costs (in respect to the plaintiff being a pauper), and that the injunction, formerly dissolved against the defendants *Geldart* and *Reynaldson*, as to the bond from the plaintiff, shall be continued by consent, until the said plaintiff shall give the defendants further trouble, and the Court make further order herein.

The bill dismissed;
SAM. DOBB.
THO. BURY.
J. MONTAGUE.

From this decree the plaintiff appealed to the house of lords, and, after hearing counsel on this appeal, IT WAS ORDERED AND ADJUDGED, on the twenty-first of *March* 1715, that the same should be dismissed, and that the dismissal of the appellants bill therein complained of should be affirmed.

and on appeal to the house of lords, the decree affirmed.

See 1. Bro. P. C. 547. 549.

TRIN. TERM,
1. GEO. I.

SWYER against WELD.

Dorsetshire, 7th July 1715.

The lessee of the impropriator of *East Lulworth*, in *Dorsetshire*, claims tithes in kind of corn, grain, and hay, of *Castle Farm*, and *Park Farm*.

THE bill stated, that the defendant *M. Turbeville*, being seised in fee of the rectory and parsonage impropriate of *East Lulworth*, in the county of *Dorset*, leased the same to the plaintiff, who had been lessee thereof for two years past, and of all the great and other tithes arising therein, and in the titheable places thereof, particularly the tithes of corn, grain, and hay; that the defendant *Dolberry*, having purchased of the said *Turbeville* the said rectory, did confirm the said lease to the plaintiff; that the defendant *Weld* was, and is still possessor and occupier of several lands, and particularly of four acres of arable land, part of a farm called *Castle Farm*; that the defendant *Davis*, as tenant to the defendant *Weld*, was, and is still occupier and possessor of several lands, particularly of ten acres of arable land, part of the said *Castle Farm*; that the defendants *Weld* and *Davis*, about July 1711 and 12, had cut pease and other grain from off the said farm, and also wheat, without setting out the tithes thereof, or paying to the plaintiff any satisfaction for the same. The bill therefore prayed a discovery from the said defendants, and also an account of their titheable matters and things.

The defendants, as to *Park Farm*, plead a *modus* of 5l. a year in lieu of all tithes;

The defendants *Weld* and *Davis* said that they were strangers to the plaintiff's title, and knew not that he was lessee of the tithes of the said parish; that the defendant *Weld* was possessor of *Park Farm*, containing several acres, of the value of two hundred pounds a year; and that time immemorial five pounds had been paid to the vicar as a *modus*, and in lieu of all tithes accruing from the said farm; that within sixty years last past, several parcels of the said farm had been ploughed up and sowed with wheat, pease, oats, and barley, by him and his ancestors, and their tenants, and that no tithes had ever been paid, except once or twice without his consent; that he and his ancestors have, time immemorial, repaired part of the chancel of the church; and he insisted, that if the *modus* aforesaid had not existed, yet that such reparations are in lieu of the great tithes; no tithes having, within the memory of man, been paid for the said farm: and he set forth the quantity and value of his tithes. The defendant *Weld* put in the like answer.

and insist, that they being bound by prescription to repair the chancel of the church, they are thereby exempted from paying tithes in kind.

The impropriator admits he made the lease to the plaintiff, and says, the farm has always paid tithes in kind.

The defendant *Turbeville* said, that, being seised in fee of the tithes of *East Lulworth*, she leased the same to the plaintiff, for three years, for thirty-two pounds a-year, and at the expiration of the said lease, granted the same to the defendant *Dolberry*, her nephew and heir; that she had known the farm for forty eight years, and that during all that time her husband constantly and without

without

without interruption had received the tithes thereof in kind of all corn and grain upon the said *Park Farm*.

SWYER
against
WELD.

The defendants *Turbeville* and *Dolberry* said, that the tithes and dues, fought for in the bill, do of right belong to the plaintiff, and consent that he shall have the same, and the benefit thereof.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon reading the proofs taken in the cause, and on debate of the matter;

IT IS ORDERED BY THE COURT, that the defendants *Weld* and *Davis* do forthwith account with the plaintiff for the tithes of corn and grain, during the time mentioned in the bill; and that the deputy remembrancer do take the said account and report the same. The deputy made his report accordingly; which was confirmed by the court on the sixth of *February 1715*.

The defendants
ordered to ac-
count for their
tithes.

BABBAGE *against* ROCKEWOOD.

TRIN. TERM,
1. GEO. 1.

Suffolk, 20th June 1715.

THE bill stated, that *R. Rusbbrooke*, clerk; rector of *Stanningfield*, in the county of *Suffolk*, by deed, dated the twentieth of *March 1711*, demised to the plaintiff the parsonage house, glebe, and tithes for twenty-one years, in case he should so long live; that, by virtue thereof, the plaintiff became entitled to have and enjoy the said glebe and tithes; that the defendant had in his possession one acre of wood ground, being the glebe belonging to the said rectory, and had taken wood growing thereon; that the said defendant also occupied sixty acres of ploughed ground, and several acres of meadow and pasture, and had carried away the corn and grain growing thereon, without setting out the tithes, either for the said arable lands, or for his meadow and pasture grounds; that in the last two years he had cut twenty acres of wood in *Rycroft Wood*, within the said parish, and had converted the same to his own use, on a pretence that there was a *modus* payable for the same in lieu of the tithes.

The rector of
Stanningfield, in
Suffolk, claims an
acre of wood-
land as part of
his glebe, and
the tithes of *Hay-
wood, Hussy Wood,
Hall Wood, Ry-
croft Wood, and
Coldham Hall
Farm*.

The defendant admitted, that *Rusbbrooke* might be rector of the said parish, and that he had made such lease as in the bill is mentioned, and said, that there is an acre of wood, parcel of or adjoining to *Haywood*, which is, and for all his memory hath been called *the tithe acre*, or *composition acre*, and that he believed the underwood thereof, for all the time in the bill mentioned, had been cut and taken by the rectors of the said parish; but he denied, that the said acre ever was or is glebe, or that the soil or timber ever was part of the rectory or glebe, and insisted, that the same belonged to him and his ancestors; that, as owner of the soil, he had taken and felled the timber; and

The defendant
denies the acre
to be glebe, and
says, that a par-
cel of woodland,
called the *Tithe
Piece*, was given
to the rector in
lieu of the tithes
of the four
woods, and that
he compounded
with him for 6l.
a year, for *Cold-
ham Hall Farm*.

BARRAGE
against
ROCKWOOD.

that the underwood growing thereon belonged to the rector or his lessee, in lieu of tithe underwood for the rest of the wood, called *Haywood*, and of the underwood growing upon *Hussey Wood*, *Hall Wood*, and *Rycroft Wood*, for which he insisted no tithes ought to be paid, and that the underwood of the said acre always was and is taken in lieu of tithes for the rest of the said woods. He confessed, that in the said years, he had used several acres of arable, meadow, and pasture ground, and had cut divers quantities of corn and grass, and had other titheable matters and things for which no tithes were set out or ought to be paid; for that by agreement, dated the fourth of *August* 1696, the said *Rusbbrooke* had let to him to farm all the tithes of the farm called *Coldham Hall*, in *Staningfield*, for so many years as he should keep the said farm in his own hands, for six pounds a-year; that he now holds the same, and is willing to pay the said monies to *Rusbbrooke*, or his lessee, for the said four years, pursuant to the said agreement. He denied, that he ever pretended there was any *modus* for tithing within the said parish, other than for the afore-said four woods, and, insisting on the said agreement, denied that he had any other lands in his possession than *Coldham Hall Farm*, nor any other titheable matters than those which he had set forth in his answer. He confessed, that he had cut about four acres of underwood, in each year, in part of *Rycroft Wood*, which underwood, he insisted, did not grow in the said parish, but in the parish of *Hawsted*, the tithe of which he had paid to the parson there.

The evidence
read.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the lease under which he claimed, made to the plaintiff, as in the bill stated, and the agreement from *Rusbbrooke* to the defendant, for the payment of six pounds a-year, which sum had been tendered by the defendant and refused to be received by the plaintiff, and after full debate of the matter;

The bill dismissed, with costs, on the defendant paying the composition for *Coldham Hall Farm*.

IT IS ORDERED BY THE COURT, that the bill be dismissed with costs, to be taxed by the deputy remembrancer of the Court, to whom it is hereby referred to tax the same, the defendant thereout allowing to the plaintiff the sum of six pounds a-year, for the tithes of the said farm, for the two years before filing the bill, according to the said agreement.

SAM. DODD.
THO. BURY.
RO. PRICE.
JA. MONTAGUE.

HODGSON

HODGSON against SMITH.

Kent, 14th July 1715.

THE bill stated, that the governors of *Sir John Hoskin's* hospital, by indenture, dated the twenty-sixth of May 1710, demised, granted, and to farm let to the plaintiff all their tithes of corn, grain, hay, fother, hemp, lambs, wool, pigs, together with all manner of other tithes of the said governors in right of the hospital, arising in *Wellen*, otherwise *Welling*, and *Wickham*, otherwise *East Wickham*, in the county of *Kent*, to hold to him, his executors, and administrators, for forty years; that, by virtue of the said lease, the plaintiff became entitled to all the said tithes, and to all manner of other tithes of the said governors in right of their said hospital arising in *Wellen* otherwise *Wickham* afore said; that the defendants had been severally occupiers of arable land for four years past, and had ploughed and sowed the same with barley, oats, tares, &c. and carried away the same without setting out the tithes thereof; that they also had ewes and other sheep, which had lambs and wool, and several other titheable matters and things. The bill therefore prayed to be relieved in the premises.

The defendant *Smith* stated, that at *Michaelmas* 1713, he held a farm and lands, part of which lay within the chapelry of *Wickham*, and the rest in the parish of *Plumstead*; that by reason of the scarcity of meadow in *Wickham*, the inhabitants there used to sow tares, and cut the same green for fother, never intending the same for seed, and that he sowed some tares for that use, and fothered his cattle therewith; that the tithes of all hay, clover, and such fother grass belongs of right to the vicar of *Plumstead*, who supplies the cure of the chapel of *Wickham*, to whose vicarage the chapel belongs, and the tithes of hay, clover, grass, wool, lambs, and all other small tithes, whatsoever arising within the said chapelry of *East Wickham*, and parish of *Plumstead*, do belong to, and time out of mind have been held by the vicars there; and he set forth all the small tithes he had within the said chapelry, which he said he had paid to the vicar, and that what corn tithes he had the plaintiff had taken them all excepting only the tithes of the said tares.

The defendant *Webb* set forth that the present vicar of *Plumstead* let all the vicarial tithes of *East Wickham* to the parishioners and inhabitants there, who usually sowed pease and tares for fother, which they cut green for their cattle, and that the said vicar claimed and had always enjoyed the tithes of all hay, fother, and all other tithes, except corn tithes, arising within the said chapelry; that the lessees of the hospital always had the great tithes in the chapelry, but not the tithes of hay and clover, and that he had agreed with the vicar for all the time demanded by

TAIN. TERM,
I. GEO. I.

The governors of *Sir John Hoskin's* hospital claims the tithes of *East Wickham*, in *Kent*, and particularly the tithes of tares cut green for foddering of profitable cattle.

S.C. Bunb. 279.

The defendants say that the vicar of *Plumstead* supplies the cure of the chapel of *East Wickham*, and is therefore entitled to the tithes.

That the governors of the hospital are only entitled to the great tithes;

HODGSON
against
SMITH.

and that they
have compound-
ed with the vicar
of *Plumstead*.

The evidence
read, and the
cause adjourned.

The court of o-
pinion that the
tithes of tares cut
green are due
to the governors
of the hospital.

the bill, for all the tithes of hay, grass, clover, and all other tithes except corn; and he set forth the titheable matters he had.

The defendants insisted, that *East Wickham* is a chapelry annexed to the parish of *Plumstead*, and that the other tithes belong to the vicar of the said parish, with whom they had compounded, and not to the plaintiff, or to the governors of the hospital, or to their lessees.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard the fourteenth day of *June* last; and upon reading the said lease, and the proofs in the cause, it was then ordered that the cause should stand over, that, in the mean time, the Court might consider, whether the tithes of tares, cut green for fother, did belong to the plaintiff, or to the vicar of *Plumstead*; and the cause now coming on this day,

THE COURT declared their opinion, that the tithes of the defendants said tares, cut green and used for fother, belong to the plaintiff, and not to the vicar of *Plumstead*.

IT IS THEREUPON ORDERED AND DECREED, that the defendants shall account with and satisfy the plaintiff for the value of the tithes of the tares by them cut green and used for fother, which the defendants respectively had within *Welling* and *East Wickham* in 1714, with costs, except for the examinations relating to the small tithes, for which the defendants are to have costs, and it is hereby referred to the deputy remembrancer to take the said account, and to tax the said costs.

Pursuant to which order the deputy remembrancer made his report, dated the fifteenth of *December* last, and upon reading the said order and report, there not being any exceptions taken thereto, the Court ratified and confirmed the same, and ordered that the defendant *Smith* do forthwith pay to the plaintiff the two pounds, five shillings, so reported due for the value of nine acres of tares by him cut green in 1714, and that the defendant *Webb* do pay two shillings and sixpence for his tithes of an acre and an half of tares cut green as aforesaid.

THE COURT FULL.

TRIN. TERM,
1. GEO. 1.

EGERTON against JOLLEY and Others.

Cheshire, 19th July 1715.

The inhabitants
and landholders
of the township of
Odred, in the pa-
rish of *Astbury*, in
Cheshire, pay their
tithes in kind to
the rector of *Ast-
bury*.

THE plaintiff, as rector of the parish church and rectory of *Astbury*, in the county of *Cheshire*, filed his bill in this court, stating, that his predecessor, for forty years, had been entitled to the tithes of corn, grain, hay, calves, hemp, flax, and other titheable things yearly arising, &c. in the said parish; that the

said

EGERTON
against
JOLLEY
AND OTHERS.

said parish is of large extent, consisting of eleven villages, townships, or hamlets; that one of them, the largest in extent and most valuable, is called *Odode*, and lies very remote from the parsonage house of the said parish; that the inhabitants and owners of land in the said township of *Odode*, being desirous to become farmers of their own tithes, the plaintiff's predecessor, being aged and infirm, had leased the same to different persons during his life, and that the said persons had leased the same out again to other people at forty-two pounds a-year; that after making the said lease *Mr. Hutchinson*, the plaintiff's predecessor, continued rector thereof until the year 1705, during which time the assignees of the said lease continued to receive the tithes of *Odode*, under the said lease; that on the said *Hutchinson's* death the plaintiff became rector of the parish, and, as such, is entitled to all manner of tithes arising within the same; that soon after the plaintiff became so entitled, the defendants *Wilbraham, &c.* four of the principal inhabitants and owners of houses and lands within the township of *Odode*, on behalf of themselves and the rest of the inhabitants, occupiers of lands there, treated with the plaintiff for a lease of all the tithes arising there; that he granted the said tithes to them at forty pounds a-year, clear of all taxes, on the twenty-second of *September* 1705; that the said lease expiring in 1712, and they being desirous to renew the same, the plaintiff surveyed the tithes of the said township, and finding the same to have been underlet, insisted on an advancement in the rent, and that they refusing to comply therewith, the plaintiff did not grant them a new lease, but insisted on collecting the tithes in kind, which he hoped they would have set out for the years 1712 and 1713, but that they had refused so to do, on pretence of *modususes* or other exemptions, and had entered into a subscription to contest the plaintiff's right to the same. The bill therefore prayed to be relieved in the premises, and a discovery of their tithes.

Several of the defendants admitted, that *Mr. Hutchinson* had been rector of the parish, and as such entitled to all titheable matters arising therein; that the parish is of large extent; and that *Odode* township is the largest and most valuable township, and the remotest of any of the townships from the parsonage house; but they insisted, that several *modususes* had been time immemorially paid to the rector, for all corn and hay arising on all lands in *Odode*, at two equal payments yearly, viz. at *St. James's Day*, and *Candlemas Day*, and set up various *modususes* for their said farms for the tithes of hay, corn, and cattle.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading several leases, and old rentals, and other tithing books of the parish, and the depositions of several witnesses, and on long debate of the matter,

EGERTON
against
JOLLEY
AND OTHERS.

THE COURT declared there was no *modus* for exempting the defendants, and other the inhabitants and occupiers of houses and lands within the township of *Odrede*, within the parish of *Asbury*, from the payment of tithes in kind.

IT IS THEREFORE ORDERED, that the defendants do severally come to an account with the plaintiff, for the several and respective tithes from them due to him, for the years 1712 and 1713, and it is referred to the deputy remembrancer to take the said account and report the same. The deputy made his report accordingly, and the same was confirmed by the court.

THO. BURY.

RO. PRICE.

JA. MONTAGUE.

TRIN. TERM,
1. GEO. I.

ARMSTEAD against PERKINS.

Warwickshire, 18th July 1715.

The governors of the free grammar school and *Christ's* hospital, in *Oakham* and *Uppingham*, in *Warwickshire*, claim the tithes of the parish of *Bulkington*, and of the hamlets of *Ryton*, *Weston*, *Marston Gibbon*, *Barninkle*, and *Branscote*, and a right of way through a yard in *Marston*, to carry the tithes from *Hill Close*, *Hill Close Meadow*, and *Far Lavons*.

THE plaintiff *Armstead*, widow and relict, and also administratrix of the goods and chattels, rights and credits of *A. Armstead*, clerk, deceased, and the plaintiff *S. Taylor*, executor of the last will and testament of *W. Taylor*, his brother, deceased, stated by their bill, that the governors of the goods, possessions, and revenues of the free grammar school of *R. Johnson*, clerk, and of the two hospitals of *Christ* in *Oakham* and *Uppingham*, of the foundation of the said *R. Johnson*, in the county of *Warwick*, being seised of an estate in fee simple, to them and their successors of all that rectory and parsonage impropriate of the parish church of *Bulkington*, and the vills of *Ryton*, *Weston*, *Marston Gibbon*, *Barninkle*, and *Branscote*, in the said parish and county, did, by indenture, dated the thirty-first of October 1707, demise and to farm let all the said rectory or parsonage impropriate, and all other the premises therein particularly described, to the said *A. Armstead* and *W. Taylor*, their executors, administrators, and assigns, for fifteen years; that the said *Armstead* and *Taylor* came to an agreement not to take any benefit of survivorship, and that the executors or administrators of the person first dying, or their executors or administrators, after both their deaths, should enjoy equal benefits of the said demised premises, and equally pay the rent; that *Armstead* died on the sixth of July 1708 intestate, and administration was committed to the plaintiff, *Mary Armstead*, his widow; that *Taylor* died on the eighth of October 1713, having made his will and appointed the plaintiff *W. Taylor* his sole executor, who proved the same; that the plaintiffs have entered upon the said premises, and are by the said indenture of lease entitled to hold the same, and to have and receive all the tithes of the parish of *Bulkington*, and of the vills of *Ryton*, &c.

as

as aforesaid; that the defendant having been seised and possessed, for seven years past, of three closes within the said parish, called *Hill Close*, *Hill Close Meadow*, and *Far Lawns*; had ploughed and sown the said close called *Far Lawns*, with several kinds of grain, and reaped the same, and mowed the grass of the said close, and made the same into hay, and carried it away without setting out the tithes thereof, or paying any thing in lieu of the same. The bill therefore prayed that he may account for the value of the said tithes.

ARMSTEAD
against
PERKINS.

The defendant, by his answer, admitted, that the governors of the said school and hospitals might be seised of an estate in fee simple in the rectory impropriate, tithe barn, and tithes arising in *Bulkington*, and in *Ryton*, &c.; that they might make such lease to *Armstead* and *Taylor*; that they had entered on the said premises, and had died about the time in the bill mentioned; and that the plaintiffs had enjoyed all, or the greater part of the tithes by the said lease. He confessed, that he had been seised and possessed of several closes, all in the lordship of *Weston*, in the parish of *Bulkington*, and that some parts thereof had been mowed and made into hay, and others sown with oats and pease; and he insisted, that the tithes thereof were duly set out, and that he had not carried them away, but that the plaintiff had refused to take the same, in two of the said years, and had suffered the tithes of the corn and hay, which were set out to lie and rot, to the defendant's loss. The defendant further stated, that, as to the pretended right of way through his yard to carry tithes, the said three closes are all of them within the lordship of *Weston*, and were parcel of a park, formerly *Lord Zouch's*, and purchased from him by his ancestors; that his dwelling house and all his barns, yards, &c. (save about an acre of his orchard and garden, which was lately taken out of the *Hill Close*, in *Weston*, and laid to his orchard and garden) are in the lordship of *Marston Gibben*, and in the said parish of *Bulkington*, and none, except as before excepted, in the lordship of *Weston*; that his ancestors, at the time of purchasing the said closes, being also seised of the houses and outhouses in *Marston*, did, for their own conveniency, make a way out of the back side of the said house into another close in *Weston*, called *the Near-Lawns*, being other part of *Weston Park*, and that before then there was no way out of his back side into any of the said closes in *Weston*, called the *Hill Close*, *Hill Close Meadow*, *Far Lawns*, and *Near Lawns*; that about seventy years since, his father took down an old barn on the back side, and built up a new one, made a gateway at the end thereof, and that, until that time, there was no way at all, but through the said old barn, with any manner of carriages, out of his yard or barn side into his said closes, or any of them, or out of the said closes into his yard; and he insisted that the plaintiff had no right to carry away his tithes through the said

The defendant admits the plaintiff's title to the tithes, and says that he set them out;

but he denies, that they have any right to carry them through his farm yard, and shews another way, through which, he insists they ought to be carried to the tithe barn.

gate,

ARMSTEAD
against
PARTING.

gate, and therefore he confessed that he had locked the same against him ; but he said, that the way is through other closes, part of *Weston Park*.

The plaintiffs replied ; the defendant rejoined ; and witnesses were examined ; and upon reading the depositions taken in the cause, and on full debate,

An issue directed
to try the right
of way ;

IT IS ORDERED BY THE COURT, that a trial at law shall be had on the issue following, viz. " Whether the plaintiffs have a way " through the defendant's yard belonging to the dwelling-house " in *Morston* to fetch off the tithes of corn, grain, and hay, arising, &c. within the several closes in *Weston* aforesaid, called " *Hill Close*, *Hill Close Meadow*, and the *Far Lawns*, to their " tithe barn in *Bulkington* aforesaid, or not ?"

and the equity
reserved till af-
ter the trial.

AND IT IS FURTHER ORDERED, that as to the plaintiff's demand of tithe from the defendant for the several lands, and for the time in the bill charged to be due and answerable to them, this Court will further hear this cause, and give their opinion after the said trial shall be had.

On the sixth of *July* 1716, the cause came on for a re-hearing on the plaintiff's petition, when the following issue was directed, viz. " Whether the plaintiffs, or either of them, have a way " through the defendant's yard belonging to his dwelling-house " in *Morston*, in the county of *Warwick*, as in their bill " charged, or any other and what way to fetch off the tithes of " corn, grain, and hay, arising, growing, or renewing, within " the several closes in *Weston* aforesaid, called *Hill Close*, *Hill " Close Meadow*, and the *Far Lawns*, to their tithe barn in " *Bulkington* aforesaid ?"

TRIN. TERM,
1. GEO. I.

SPOONER against HEAD.

Suffolk, 18th *July* 1715.

The rector of *Aldham*, in *Suffolk*, is entitled to all the wood growing in a piece of woodland, containing an acre and a half, lying to the east of *Smallbrook Wood*, in lieu of the tithes of wood felled on ancient wood grounds in the said parish.

THE bill stated, that the plaintiff, for nineteen years past, had been rector of the parish of *Aldham*, in the county of *Suffolk*, and was entitled to the tithes therein, or to some satisfaction for the same ; that the defendants had been, for several years past, inhabitants, and had titheable things therein ; that all the defendants occupied meadow and pasture, and held several coppice woods and wood grounds, and had yearly felled great quantities of titheable underwood, and had kept several dry and unprofitable cattle, and made great profit of them, and had other titheable things of considerable value, but did not set forth their tithes, pretending some *modus*. The bill therefore prayed, that they might set forth what woods, underwoods, coppices, and lands, they had ; the value thereof ; what they had cut ; the quantities, and values ; and make satisfaction for the same.

The

The defendants confessed the plaintiff to be rector as aforefaid; and they set forth the quantities and values of the woods they held and had felled; and said, that they had compounded with the plaintiff's lessee for the tithes of them, and other tithes due.

SPONNER
against
HEAD.

The defendant *Head* said, that the woods he occupied had been anciently, and time out of mind, wood ground; and that no tithes are payable for the same; for that there is, and hath been, a certain close of wood ground, containing one acre and a half, parcel of the manor of *Aldham*, lying in *Aldham* parish, next to a certain great wood, called *Smallbrook Wood*, towards the east on the one part, and a close of pasture, called *Park Field*, towards the south, on the other part; and that the plaintiff, and all his predecessors, rectors of the said parish, time out of mind, have been accustomed to cut down in the said close of wood all the wood growing there, as often as they pleased, in full satisfaction and discharge of all tithes of wood growing upon the ancient wood grounds within the said parish.

The plaintiff replied, and thereby waived all the rest of his demands, save only a satisfaction for the values of the tithes of wood.

The defendants rejoined, and witnesses were examined on both sides; and upon reading a copy of a record out of the common pleas, which was proved in court pursuant to order; and on hearing what could be alledged on both sides;

The Court directed an issue to try, whether the acre and a half of woodland mentioned by the defendant *Head* in his answer to have been had and taken in full satisfaction and discharge of all tithes of wood growing upon the ancient wood grounds in the said parish, be in lieu and satisfaction of all tithe wood within the said parish of *Aldham*, or not?

THE COURT
FULL.

On the twelfth of *February* 1716, the said issue was ordered to be taken *pro confesso*, unless cause were shewn to the contrary; and now, on the first of *July* 1717, the cause coming on for further directions,

THE COURT, upon reading the said orders, and no counsel attending for the plaintiff, ordered the bill to be dismissed, with costs to be taxed by the deputy for the defendants.

BROWN against BEARNE.

Leicestershire, 24th November 1715.

MICH. TERM,
2. GEO. I.

THE bill stated, that the plaintiff had been, for ten years past, rector and parson of the rectory and parish church of *Steffington*, in the county of *Leicester*, and was thereby entitled to all

The rector of
Steffington, in
Leicestershire,
claims tithes in

kind of *Grange Wood Close*, and 2s. in the pound for the depasturing of cattle thereon.

tithes

BROWN
against
BEARNE.

tithes of corn, grain, and hay, and all other tithes and dues belonging thereto, and to all compositions, *modus*, or sums of money payable in lieu of tithes, and to all oblations, obventions, and *Easter* dues, and to all small tithes arising, &c. in the said parish; that the defendant, for divers years last past, had held and occupied a close, called *the Grange Wood*, or *the Wood Close*, containing about thirty acres, lying in the said parish, and had sometimes ploughed it, and at other times mowed, and reaped it, and carried away the corn and hay, without setting out the tithes; and that in other years he had depastured the said close with dry, barren, and unprofitable cattle, which afforded no tithes in kind, for which he ought to have paid the plaintiff tithe herbage, at two shillings in the pound, which tithe he had also withheld, pretending, that the ground is tithe free, or that some *modus* is payable in lieu of the tithes thereof. The bill therefore prayed, that the said defendant may discover the premises, and account for his said tithes.

The defendant says, the said close is the quarter part of an ancient inclosure, for the tithes of which a *modus* of 40*l.* a year was payable; and that he had paid, and was ready to pay, 10*l.* a year for his part thereof.

The defendant admitted, the plaintiff had been rector of the parish for ten years past, and that he was entitled to all tithes and dues belonging thereto, and to all compositions, *modus*, and money, payable in lieu thereof, and to all oblations, obventions, *Easter* dues, and to all small tithes; and said, that he had, ever since the year 1704, rented the said close, together with other closes, and that all the said time he had constantly eaten and depastured the said close with cattle; but he denied, that he had ever carried away any grass or hay mowed in the said close, or that the same was ever ploughed, or sowed with corn, since he had been the occupier thereof. He confessed, that he never set forth his tithes in kind for the said close; but insisted, that he had constantly paid to the plaintiff yearly a *modus*, composition, or rate of ten pounds, in lieu of the tithes of the said close and other inclosures. He further stated, that one hundred and fifty years since part of the lordship of *Skeffington* was inclosed; upon which the then rector, and the proprietors of the said inclosure, made some agreement that a composition or *modus* of forty pounds *per annum* should for ever after be paid by the proprietors of the said inclosure, in lieu and full discharge of all tithes that might arise or grow due from the same; that he had constantly paid the plaintiff the yearly sum of ten pounds, being the fourth part of the *modus* or composition of forty pounds *per annum*, ever since he had held the said closes, being the fourth part of the said inclosure, and which the plaintiff had accepted; and therefore, as he had always paid the same, he had kept no account of his titheable matters, but believed that no tithes in kind had ever been paid for the said land excepting once, by mistake; and that the said close had been reputed part of the old inclosure, and exempted from tithes as the inclosure was.

The

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading several receipts under the plaintiff's hand-writing to the said defendant, for the said composition of the said *Grange Wood Close* ; and upon reading the proofs in the cause ; and on full debate ;

BROWN
against
BEARNE.
The rector's receipt for the said 1el. a-year read.

IT IS ORDERED BY THE COURT, that it be referred to a trial at law upon the following issue, viz. " whether *Grange Wood Close* is part of the ancient inclosure in the parish of *Skeffington*, " for which the forty pounds *per annum* composition has been " paid, in lieu of the tithes of such inclosure, or not ?"

An issue to try, whether the *Close* was part of the Inclosure.

SWORDER against BUSH.

Hertfordshire, 14th November 1715.

MICH. TERM,
2. GEO. I.

THE bill stated, that the defendant, for one year past, had ploughed and sowed, in a common field called *Tasfield*, within the rectory and parish of *Little Hadham*, in the county of *Hertford*, twenty acres of land, with wheat, barley, and other grain, and reaped and carried away the same, without setting out the tithes thereof, or making satisfaction to the plaintiffs for the same.

The plaintiff claims tithes under a *parol lease* from the rector.

The plaintiffs claimed the tithes under a *parol lease* thereof made to them by *W. Stanley*, D. D. then rector of the parish.

The defendant denied that he had ploughed any more ground in *Tasfield* than one acre and an half, which he sowed with wheat, and one acre more in an inclosure adjoining to *Tasfield*, which he had likewise sowed with wheat ; and he insisted, that he had caused the full tithe of all the said wheat to be duly set out and left in the field ; and that he had given notice to the plaintiff to fetch the same away ; and that he ought not to make satisfaction for what was lost by the plaintiff's own default.

The defendant says, he set out his tithes, and that the plaintiff neglected to fetch them away.

The plaintiffs replied ; the defendant rejoined ; and witnesses were examined on both sides ; and the cause was set down, at the defendant's request, to be heard this day ; when

The defendant's counsel insisted, that it appeared of the plaintiff's own shewing, by their bill, that they claim by a *parol lease* ; which being in a case of tithes is void in law ; so that the plaintiffs cannot be relieved upon their bill.

The defendant's counsel says, a *parol lease* of tithes is void.

And, after debate of the matter,

IT IS ORDERED AND ADJUDGED BY THE COURT, that the bill be dismissed with costs.

The bill dismissed.

THO. BURY.
RO. PRICE.
J. MONTAGUE.

BIRD

MICH. TERM,
2. GEO. 1.

BIRD *against* FORSTER.

Surry, 6th December 1715.

The vicar of *Riegate*, in *Surry*, claims the small tithes of a farm called *Park Hill*, and of a piece of land, called *the Budgins*.

See post. 33.

THE bill stated, that about four years past the plaintiff was duly presented, &c. vicar of the vicarage or parish church of *Riegate*, in the county of *Surry*, and had duly performed the cure there; that by virtue thereof, or otherwise, he is entitled to all vicarial tithes due and payable to the vicar within the said vicarage and the titheable places thereof; that the defendant was an inhabitant therein during the time aforesaid, and held divers lands, hop grounds, gardens, and orchards, and had growing thereon hops, apples, pears, plumbs, cherries, and other fruits, and great quantities of garden pease and beans; that he also kept milch cows, which had calves, and sows which had pigs, and had a number of other things, the small tithes of which he refused to pay to the plaintiff, or to make him any satisfaction for the same, pretending, that the said hop ground and lands do not lie within the said parish, and are exempted from the payment of tithes.

The defendant says, there is a *modus* of 5s. a-year payable in lieu of part of the tithes of *Park Hill*;

The defendant said, that he believed the plaintiff was lawful vicar of the vicarage, and entitled to all oblations and vicarial tithes happening therein; and he admitted, that he was an inhabitant in the said parish, and had occupied one messuage with the appurtenances, and also from *Lady Day* 1712 another farm, lands, tenements, with the appurtenances, called *Park Hill*, containing forty acres, and two fields, called *the Budgins*; but he insisted, that the usual method was for every inhabitant to pay a certain sum of money in gross to the vicar, in lieu of oblations, and for the tithe of each mansion-house and for garden tithes, five shillings; which sum the plaintiff had frequently accepted as an ample satisfaction for such tithes. He said, that on the lands called *Park Hill*, being commonly pasture at sixteen pounds *per annum*, he had kept and depastured unprofitable cattle, and had offered to pay the plaintiff one pound, twelve shillings, for the agistment tithes thereof for one year, and believed they were not worth more; that in the said year part of the farm being ploughed and sown, the tithes thereof belonged to the impropiator. He also said, that the fields called *the Budgins* are the lands of the impropiator belonging to the rectory, and that they were rented by him of the rector tithe free, and had been so for thirty years past; but that the plaintiff, about a year since, demanded twenty shillings a-year in lieu of agistment tithe, which he had refused to pay. He averred, that he had offered to pay, and did by his answer offer to pay, five shillings a-year, in lieu of oblations and vicarial tithes due for his said house and garden for four years past, and for agistment tithe of the said tenement called *Park Hill* for two years past, two pounds, sixteen shillings, which the plaintiff had refused, unless he would pay him his pretended demand for the said two fields.

The

and that the land called *the Budgins* is part of the rectory; and that he rents it *tithe free* of the rector.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading the proofs in the cause, and on full debate,

BIRD
against
FORSTER.

IT IS ORDERED BY THE COURT, that it shall be referred to a trial at law upon this issue, " whether the lands and " grounds called *Budgin's Close*, containing four acres, be part of " the ancient rectory of *Riegate*, or not ? "

An issue directed to try, whether *Budgin's* is part of the rectory.

And as to the other lands called *Park Hill*, the bill is dismissed.

Bill dismissed as to *Park Hill*.

And as to all other demands of tithes in the bill, it is referred to the deputy remembrancer to take the said account ; the costs to be reserved till after the trial.

On the fourteenth of *June* 1716, the decree and *posse* was read ; and it was decreed, that the defendant do account ; with costs at law and in equity.

Defendant decreed to account.

JOHNSON against LAWSON.

MICH. TERM,
2. GEO. 1.

Northumberland, 5th December 1715.

THE bill stated, that the *Bishop of Carlisle*, being seised of a moiety of the corn tithes, in the parish of *St. Nicholas*, in *Newcastle-upon-Tyne*, did, by lease dated the twenty-fifth of *July* 1712, demise the same to the plaintiff *J. Johnson* for twenty-one years, at ten guineas a-year ; that the dean and chapter of *Carlisle* being seised of the other moiety of the said tithes, did, by lease dated the twenty-third of the said *July*, demise the same to the plaintiff *J. Johnson*, for the like term, at eleven pounds a-year ; that the said *J. Johnson* held and enjoyed the said tithes till *July* 1714, when, for a valuable consideration, he conveyed the tithes of the township of *Cramlington*, part of the said parish, to the other plaintiffs, whereby they also became entitled to and ought to have had and received the corn tithes arising in the said township ; that the defendants, in 1714, held several lands and tenements within the said township, on which they had corn and grain, the tithes of which they ought to have paid in kind, or made some satisfaction for the same, but which they refused to do under several pretensions. The bill therefore prayed an account and satisfaction for the said tithes, and that the plaintiffs may have a way to carry their tithes off the lands.

The plaintiff, as lessee of the *Bishop of Carlisle*, and the dean and chapter of *Carlisle*, claims the corn tithes of the township of *Cramlington*, and a convenient way to carry the said tithes from the lands on which they are set out.

The defendants *Hall* and others, by their answer, confessed, that during the said year they, as tenants to the defendant *Lawson*, held and occupied arable land in the said township, on which they had growing corn and grain, the tithes of which they believed the plaintiffs were entitled to in kind, and which they said they had fully set forth. And all the defendants confessed, that they

The defendants say, that, by the custom of the township, the corn tithes are to be lodged in the farmers' barns, and there threshed, &c.

had

JOHNSON
against
LAWSON.

had refused to let the plaintiff have a way to carry the same from off the lands, it being the custom within the said township of *Cramlington*, that the proprietors or farmers of the said corn tithes in *Cramlington*, on notice given to the occupiers of lands there, at proper times of tithing, did tithe the several sorts of corn and grain then standing, and when it was seasonable to lead away the same, the owner or tenant of the land from whence they were to be taken, provided one, or as many draughts as were necessary, and a man to each draught, and the owners or farmers of the tithes provided another man to each draught, which they loaded with the tithe corn, and which was led to the yard or garth of the tenant of the lands from whence it was taken, and there was inned and stacked, and the tenant of the land covered it with his own straw; and that when it was to be threshed, the owner or farmer of the tithes had the use of the tenant's barn to thresh it in, and of his winding cloths and sieves for dressing it, and the straw was left to the said tenant of the lands, who claimed it as his due, and enjoyed it accordingly: and they insisted, that the corn tithes within the said township were never paid in any other manner than according to the said custom.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the defendants answer,

The defendants
ordered to ac-
count for the
corn tithes;

IT IS ORDERED BY THE COURT, that the defendants do account with and pay to the plaintiffs for the value of the tithe corn and grain which grew on their lands in the said township of *Cramlington* in 1714: which account is to be taken by the deputy remembrancer, who is to report the same.

and to set out a
convenient way
for carrying
them from the
premises.

AND IT IS FURTHER ORDERED, that the defendants do set out and appoint a good and convenient way for the said plaintiffs, and the owners and farmers for the time being of the corn tithes within the said township, their servants and agents, to fetch and carry away the tithes of the corn and grain which shall for the future arise and grow due from and upon their said lands within the said township of *Cramlington*.

In pursuance of the said order, the deputy remembrancer made his report, dated the eighth of *March* last; and upon reading the said order and report without exceptions,

The report con-
firmed.

IT IS ORDERED BY THE COURT, on the seventh of *May* 1716, that the said report be ratified and confirmed, and that the said defendants do severally pay to the said plaintiff the several sums so reported due.

THO. BURY.

RO. PRICE.

JA. MONTAGUE.

NEWTON

NEWTON against BIRD.

Surry, 6th December 1715.

Mich. Term,
2. GEO. 1.

THE plaintiff *Newton* and his wife; the widow and relict of *Harestreet James*, deceased; *Roger James*, son and heir of the said *Harestreet*; and *Elizabeth Bowyer*, widow and executrix of *A. Bowyer*, deceased, filed their bill against *John Bird*, clerk, vicar of *Riegate*, stating, that *Edward the Sixth*, in right of his crown, and by virtue of one or more acts of parliament for the dissolution of religious houses and the vesting of their estates in THE CROWN, was seised in fee of and in the rectory and church of *Riegate*, in the county of *Surry*, and the advowson, donation, and right of patronage of the vicarage of the said church, with the appurtenances, late belonging to the monastery or priory of *Saint Mary Overy*, in the said county; and that he, by his letters patents, dated the seventeenth of *December*, in the sixth year of his reign, in consideration of four hundred and fifty-eight pounds, four shillings, paid to *Sir Edward Peckham*, to his majesty's use, by *J. Skinner*, did grant to *J. Skinner* the said rectory and church of *Riegate*, and the advowson and right of patronage of the said vicarage, with the appurtenances, and also all the tithes of corn, grain, wood, hay, and all other tithes, of whatsoever sort, kind, or nature, growing, &c. in the parish, fields, and hamlets of *Riegate*, and elsewhere, in the said county, to the said rectory and church thentofore belonging, or accepted or reputed as part, parcel, or member thereof, in as large and ample a manner as the last or any former prior or priors of *St. Mary Overy* had held and enjoyed the same, TO HOLD to him, his heirs and assigns for ever; that, by virtue thereof, the said *J. Skinner* entered, and was seised of the said rectory and premises, and the same, by several descents and mesne conveyances, came to and were vested in *Roger James* the elder, father of the said *Harestreet James*, or in trust for him; that he, the said *Roger James*, upon the marriage of the said *Harestreet James* with the plaintiff *Margaret* in 1679, settled part of the said tithes and hereditaments upon him the said *Harestreet James*, who became seised thereof; that he and his tenants enjoyed the said messuages and lands so settled, tithe free, and also took and enjoyed all the tithes of corn, grain, hay, pease, beans, hops, flax, turnips, and other roots, and all other tithes arising on that part of the said parish so settled upon him; and that the said *Roger James* enjoyed the residue; that after the death of the said *Roger James*, the said *Harestreet James* became seised of the whole, and enjoyed the same until his death, which happened twelve years since; that after his death, the said rectory, tithes, and premises, became and were legally vested in the plaintiffs, who ought to enjoy the same tithe free, and not pay any tithes to the said vicar, but ought to receive the tithes appertaining to the said rectory, as their predecessors, the former owners of the said rectory, had done; that the defendant was, about five years

The impropriator of *Riegate*, in *Surry*, files his bill against the vicar for the tithes of pease, beans, hops, &c.

See ante, 30.

NEWTON
against
BIRD.

ago, presented to the said vicarage, and had demanded from the landholders of the said parish, and from the several tenants and occupiers of the messuages and lands belonging to the said rectory, the tithe or tenth part of their corn, grain, and hay, and their small tithes; but that the same do of right belong to the rectory. The bill therefore prayed, that the defendant might set forth what tithes and titheable matters are by him pretended to belong to the vicarage, and what tithes and dues, belonging to the rectory, he had received; and that the plaintiffs may be quieted in the enjoyment of their just rights.

The vicar says, the plaintiff is entitled to the tithes of corn, grain, hay, pease, and beans, except such pease, as are gathered from the stem, and except of hay in the *Moores* and on *Colley Farm*.

Insists on the tithes of hops, wood, flax, turnips, &c.;

and that the lands belonging to the rector are liable to vicarial tithes in the hands of lay tenants.

THE COURT
FULL.

The defendant said, that he believed that there were such letters patents of the rectory, as mentioned in the bill; but to whom the said rectory was granted he knew not; but that *Roger James* the elder, by mesne conveyances, descent, or otherwise, was legally entitled to, and possessed of the said rectory and premises; and that he and his predecessors, owners of the said rectory, did and ought to take and enjoy the tithes of all corn, grain, hay, pease, and beans arising in the said parish belonging to the rectory, except of such pease and beans as are podded and gathered from the stems and stalks by gardeners and others, and by them vended and uttered green in the pods, and excepting such corn, grain, pease, and beans, as are planted in gardens and orchards, which always belonged to and were received by the vicars, and except the tithe of hay growing on lands in the west end of the parish, called the *Moores*, which had been always enjoyed by the vicar as his right, and also the tithe of hay and grass growing on a close of about two acres, lying near a farm called *Colley*; all which excepted tithes he said he had received since he became vicar, and insisted on his right to the same. He also stated an agreement between his predecessors and the impropiators for the tithe of *hops*, and that in lieu thereof they had yielded and allowed to him the duties for burials in the chancel, and also forty shillings a-year for all offerings and dues; and denied that it was binding upon him; and he insisted upon the tithes of hops, wood, flax, turnips, all other roots, herbage, agistment of unprofitable cattle, and all other vicarial, small, and predial tithes, profits, commodities, and advantages, as of right belonging to the vicar, and payable to him. He also insisted, that the plaintiff's messuages and lands belonging to the rectory, when in the occupation of tenants or lessees, are not exempt from, but liable to, the payment of tithes; and, claiming right thereto, averred, that they had not been paid to him since he had been vicar.

The plaintiffs replied; the defendant rejoined; and witnesses were examined; and upon reading the proofs; the endowment of the vicarage of *Riegate*, made in the twenty-sixth year of *Henry the Eighth*; the agreement made between the plaintiff's ancestor

ancestor and *R. James* and *A. Cranston* the late vicar ; and on long debate of the matter by counsel on both sides ;

NEWTON
against
BIRD.

THE COURT declared, that the tithes of pease and beans set and sown in the fields do belong to the plaintiffs, as owners of the rectory.

The tithes of pease and beans decreed to the plaintiff.

As to the right to the tithes of turnips, carrots, and other roots sown in the fields, the Court directed a trial at law to be brought by the plaintiffs against the defendant, wherein the issue to be tried shall be, "Whether the tithes of turnips, carrots, and other roots sown in the fields, and the tithe of hops, do belong to the vicar of *Rigate*, or not ?"

An issue to try the right as to turnips and carrots.

And as to the tithe of the lands called *the Moores*, alledged to have been enjoyed by the vicars of the parish, and of the close containing about two acres near *Colley Farm*, and other the matters in the bill mentioned, the bill is dismissed.

The bill dismissed as to hay in *the Moores* and *Colley Farm*.

But the consideration of costs is reserved to the Court till the further hearing of the cause upon the equity reserved.

On the fourteenth of *June 1716*, the decree of the sixth of *December 1715* and the *posse* was read, and the bill as to the tithes of hops was dismissed ; but as to all the other things, the tithes of pease and beans sowed in the fields and gathered green or otherwise having been before decreed, the Court declared, that the tithes belong to the rector, and ordered the same accordingly ; but without costs. The defendant to have his costs for the trial at law respecting the tithes of hops.

Bill dismissed as to hops.

Other tithes, not before decreed, declared to belong to the rector.

SWATMAN against BONNER.

HILARY TERM
2. GEO. 1.

Suffolk, 6th February 1715.

THE bill stated, that the plaintiff, for four years past, had been farmer or occupier of the parsonage or impropriated vicarage and tithes of the several parishes within the borough of *Dunwich*, in the county of *Suffolk*, and the liberties and titheable places thereof, by an agreement made with *Sir R. Kemp, Bart.* the present impropriator thereof, at eighty pounds a-year ; that he was thereby obliged to provide an able minister, and to allow him thirteen pounds a-year to perform all divine services there ; and that therefore he became entitled to take of the inhabitants all and all manner of tithes, great and small, payable to the impropriator ; that the defendants, during the said term, occupied and farmed divers messuages, lands, tenements, meadows, and pasture grounds, within the borough, from whence they derived great quantities of corn, turnips, hay, hemp, flax, and other matters, for which tithes ought to have been paid ; that they

The impropriator of *Dunwich*, in *Suffolk*, claims tithes of *sprats* and *berrings* in kind.

SWATMAN
against
BONNER.

had fed and brought up cows, calves, sheep, lambs, pigs, geese, and other fowls, the tithes whereof are due to the plaintiff, but which they had refused to set out, or to make any satisfaction for the same. The bill therefore prayed a discovery of the quantities, qualities, and values, and a recompence for the same.

The defendant says, there is a custom to pay 5s. a boat for every boat employed in fishing, in lieu of the tithes of fish caught;

The defendant *Bonner* said, it may be true that the plaintiff is farmer or occupier of the said tithes by agreement, and entitled to the tithes as stated in the bill; and he stated, that he had a house and about a rood of ground in the said town of three pounds, ten shillings a-year, and had paid all tithes due to the year 1712, for which he had the plaintiff's receipts to the end of the year 1711; that in the year 1712 he had used two fishing-boats, whereby he caught several laits of *sprats* and some of white herrings; and that there is a custom to pay to the impropiator five shillings a boat, in lieu of all tithe fish caught therein, which tithe he had paid to the plaintiff for the whole of the year 1712; that in the said year he had growing in the said borough four acres of turnips, (two whereof he sold at forty shillings), which were not drawn, but fed upon the ground with milch cattle, and the other two acres he fed with his own milch cattle; for which turnips the plaintiff demanded eight shillings, and also fourpence for *Easter* offerings, which he was ready to pay to him; and he denied, that he had any titheable matters, or any cattle or other things fed in the *Town Marsh* for or in respect of any messuages, lands, or tenements, in *Dunwich* aforesaid for the said year, other than already set forth.

but not appearing on being served with a *subpœna*,

The plaintiff replied; the defendant rejoined; and several witnesses were examined on the part of the plaintiff; and upon opening the bill, and reading an affidavit of the service of the *subpœna* to hear judgment, and on reading the answer, and no counsel appearing for the defendant,

the tithes of all fish caught are decreed in kind,

IT IS ORDERED BY THE COURT, that the defendant do account with the plaintiff for the value of all manner of great and small tithes by him had and arising within the said borough and the titheable places thereof, and for all fish by him had and taken during the time in the bill mentioned; and it is referred to the deputy remembrancer to take the account, unless cause be shewn to the contrary; the said defendant first paying five pounds costs before he can be heard.

HILARY TERM
2. GEO. 1.

WATERLAND against PARKER.

Yorkshire, 22d February 1715.

The impropiator of *Paul and Marfleet*, in *Yorkshire*, claims tithes in kind,

THE bill stated, that *Edward the Sixth*, in right of his crown, was seised in fee to him and his successors of the tithes of corn, grain, hay, wool, and lamb, and of all manner of other tithes

tithes which were then lately belonging to the chapel of *Marfleet*, in the county of *York*, and yearly growing or arising in the titheable places and parish of *Paul* and *Marfleet*, and to all tithes of corn, grain, hay, and all other tithes within the rectory of *Paul* aforesaid, formerly belonging to the dissolved monasteries of *Kirshall*, and which came to the crown by virtue of some statutes made for the dissolving of abbeyes; that he, being so seised, by letters patents, dated the eleventh of *January*, in the fifth year of his reign, granted the same to *J. and W. Doddington* in fee, and by several mesne conveyances the same came and were vested in *W. Gee*, who took the tithes in kind for many years; that *W. Gee*, by good conveyances, &c. sold and conveyed to the plaintiff and his heirs all and singular the aforesaid tithes; and that the plaintiff, by virtue of his said title, ought to have received all tithes in *Paul* and *Marfleet* in kind, or satisfaction in lieu thereof; that before and ever since the plaintiff became seised of the said tithes, the defendants were and now are inhabitants within *Marfleet* aforesaid, and have been severally owners, occupiers, and possessors, of arable, meadow, and pasture ground, orchards, &c. in *Paul* and *Marfleet*, and whereof tithe have been, or ought to be, constantly paid to the said *Gee* and his ancestors, and all claiming under the said letters patents, and were answered to the crown before the same were granted; that the said defendants have severally had great quantities of wheat, rye, barley, meslin, oats, beans, pease, vetches, rape, lime, hemp, flax, and other corn and grain of value, and have also fed and depastured therein several horses, mares, colts, cows, oxen, ewes, sheep, and other cattle, as well profitable as unprofitable, as well as cattle which they bought or fed or agisted for hire; and that they had renewing, &c. on the premises, several foals, colts, lambs, wool, pigs, turkies, hen eggs, chickens, ducks, geese, gollings, and other small tithes, for all which tithe in kind ought to have been paid, but which they have detained, and refused the payment of, pretending some agreement or *modus* of twenty-four pounds *per annum* in lieu of all tithes. The bill therefore prayed a full discovery of the *moduses*, quantities, and values of their tithes, and an account for the same.

WATERLAND
against
PARKER.

The defendants, by their answer, denied that *Edward the Sixth* was, in right of his crown, seised in fee of the tithes in *Marfleet* and *Paul*, as belonging to the chapel of *Marfleet*, or the tithes within the rectory of *Paul* which did lately belong to the monastery of *Kirshall*, or that the same came to the crown on the dissolution of the abbeyes, or that the said king, by letters patents, granted the same to the *Doddington's*, or that their interest became vested in *Gee*; and said, that before the dissolution of monasteries *Marfleet*, with the whole township, had but twenty-four oxgangs; twelve thereof were held of the convent of *Albermarle*, and the other twelve of another monastery, but not of *Kirshall*;

The defendants say, that *Marfleet* formerly belonged to two monasteries, and that a *modus* of 24l. a-year is payable, in lieu of tithes, to the impropriator;

WATERLAND
against
PARKER.

and other mo-
duses for small
tithes to the
vicar.

that before the dissolution, the convent of *Albermarle* granted to *Adam*, lord of *Marfleet*, that the inhabitants there should be free from the payment of tithes for the twelve ox-gangs for ever; that nobody can tell which twelve ox-gangs they are, but that twenty-four pounds a-year had been paid for all the tithes of *Marfleet* to the impropiator, and no more; that in case the monastery of *Kirshall* had a right to half of the tithes, the convent of *Albermarle* had the other, and that the *modus* had been constantly paid to the family of the *Gees*, or to them under whom they claimed; that several of the families of the *Gees* that had the tithes always received the *modus*, and never tithes in kind; that the vicar of *Marfleet* has, for every calf that lives, fourpence; for every calf that dies, twopence; and for every foal, one penny; which, with the surplice fees, amount to three pounds a-year, which will not procure a minister without contribution. They denied that the *Gee's* had ever let the tithes; but said, that some of the inhabitants collected in proportion as much as made up the *modus* of twenty-four pounds a-year, and had twenty shillings reward for so doing. They also denied, that they knew what tithe, or right of tithes, is conveyed to the plaintiff by *Mr. Gee*, in *Paul*, or that the plaintiff ever requested to know of them what lands they had or farmed in *Marfleet*; and they set forth the quantities and values of the tithes they had in the said places; but averred, that no tithes *in kind* were ever paid for them; and said, that *Marfleet* was a grass town, but lying far from any market, the inhabitants had of late years grown their own corn; that it joins on the river *Humber*, and that the inhabitants repair the banks, for every ox-gang so much, which is very chargeable; that the impropiator pays nothing; and that they believe the said burthens are put upon them in respect of the *modus* in lieu of tithes.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides: and upon reading the deed of purchase of the tithes from *W. Gee* to the plaintiff, dated the twenty-seventh of *January*, in the twelfth year of *Queen Anne*; and a lease of the tithes from *Gee* to *Dring* and *Gossop*, dated the second of *February* 1705; and the depositions of *W. Gee*, and of several other witnesses;

Tithes decreed
to be paid in
kind.

IT IS ORDERED BY THE COURT, that the defendants shall account with and pay to the plaintiff the values of all their tithes *in kind* due and in arrear from them respectively during the time demanded by the bill, which did arise and happen on their respective lands within the said vill and township of *Marfleet*.

And it is referred to the deputy remembrancer to take and report the said account.

The deputy made his report on the first of *February* 1716; and upon reading the decree and report, without exceptions,

It

IT IS ORDERED BY THE COURT, on the twenty-first of February 1716, that the said report be ratified and confirmed; and that the said defendants do respectively pay to the plaintiff the several sums reported due for their tithes of hay, wheat, messin, barley, beans, oats, lamb, and wool.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.

WATERLAND
against
PARKER.

PENFOLD *against* ALDERTON.

Suffex, 21st February 1715.

HILARY TERM
2. GEO. 1.

THE bill stated, that JOHN Lord Cutts, deceased, being seised in his *demesne as of fee* of the rectory and parsonage-house of *Sompting*, in the county of *Suffex*, and all the glebe land to the said rectory belonging, together with the tithes of all corn and hay renewing within the said parish of *Sompting* and the titheable places thereof, did, by indenture dated the twentieth of November 1698, demise the premises to the plaintiff's father, his executors, administrators, and assigns, for twenty-one years, at one hundred and twenty pounds a year; by virtue of which lease the lessee was entitled to and did receive, from time to time, all manner of tithes of corn and hay; that the plaintiff's father died in the year 1706, and by his will made the plaintiff his executor and residuary legatee; that he had proved the will, and entered upon the premises, and had received all the tithes of grain, corn, and hay (except as after mentioned); that the defendants had, during all the said time, occupied and possessed two several pieces of pasture or down, and had fed the same with sheep from the time of the said demise, and had not ploughed or converted into tillage any part thereof at any time, and that the said pastures were called *Forehill Close* and *Cradlehill, Close*, and that they both laid in the said parish of *Sompting*; that the defendants, for two years past, had converted into tillage the said *Forehill Piece*, and in the year 1711 had sowed it with wheat, the tithe whereof was due to the plaintiff, but which the defendant had refused to set out, or to pay, or to make any satisfaction for, on some pretence that the same two pieces were exempt from payment of tithes, as being part of some religious house in *Arundell*, or granted to the *Earl of Suffolk* by *James the First*; that the defendants had paid the plaintiff his tithe of corn and grain for other lands part of the manor, or within the said parish or the titheable places of it; but contended, that he had no right to demand tithes of *Cradlehill* and *Forehill* till they were sown, in regard the tithes, whilst fed, belonged to the vicar (vicarial tithes being excepted out of the said lease made to his father), and the defendants had compounded

The lessee of the impropriator of the rectory of *Sompting Abbot's*, in *Suffex*, claims the tithes of hay and corn on two inclosures, called *Forehill* and *Cradlehill*.

PENFOLD
against
ALDERTON.

The defendant says, that the said inclosures were parcel of *the Downs*; that they have lately been sowed with wheat; that when they are mowed, the tithe of the hay belongs to the vicar; and that they were formerly parcel of some monastery, and so, when reaped, tithe free.

with the vicar for all his tithes. The bill therefore prayed, that the defendants might be compelled to account with and pay the plaintiff his said tithes.

The defendant *Alderton* said, he knew not that such demise was made to the plaintiff's testator, otherwise than by the bill. He believed that the plaintiff's father might, in his life time, receive tithes from some occupiers of lands within the parish; but he denied that he was, by virtue of such demise, ever possessed of, or that he had at any time received any tithes of corn, grain, and hay from the defendant from the manor of *Sompting Abbots*, or the *demefne lands* thereto belonging, but that the tithes he had received were for other lands in the said parish. He said, that he believed that the plaintiff since his father's death had received the tithes of some of the occupiers of land within the parish; but he denied that he had received any tithes from or for the manor of *Sompting Abbots*, or the *demefne lands* thereto belonging; but for the other lands he admitted, that the plaintiff had also received tithe of him. He said, that he occupied *Forebill*, which during the time in the bill and till about four years last past was fed by him with sheep, and which he admitted to be in the said parish, and to have been ploughed up and sowed with wheat; and he set forth the quantity and value of his tithes thereon. He also admitted, that he was owner of *Cradlehill*, and that it was ploughed and sowed with wheat during the time in the bill mentioned, but that he had let the said close. He also admitted, that after the corn growing on *Forebill* was reaped, the plaintiff demanded the tithe thereof, which he had refused to pay, for that the rectory or parish of *Sompting Abbots* is parcel of the manor of *Sompting*; and the said rectory being appropriated to some monastery or religious house, and coming to THE CROWN by the dissolution in the reign of *Henry the Eighth*, was, about the thirty-sixth year of his reign, granted out of the crown in fee, and thereby became the possession of a subject, who might grant or release the tithes of the said manor to the owner thereof; and as there never had been at any time, any tithes of grain, corn, and hay, paid for the *Old Demefnes* of the said manor to the rector of the said rectory, he insisted, that such non-payment ought to be taken as a strong presumption that the tithes of the *Old Demefnes* of the said manor had been granted or released to the former owners of the said manor; and that the said *Forebill* and *Cradlehill* had been, time out of mind, parcel of the *Old Demefnes* of the said manor; and therefore he ought not to set out the tithes thereof. He further admitted, that he had in his custody a *book of survey* of the said manor; and insisted, that the tithes of *Forebill* and *Cradlehill*, when fed, belonged to the vicar, with whom he had compounded; and that since they were ploughed, the tithes did not belong to the plaintiff, but were exempted from payment of tithe corn and hay for the reasons aforesaid.

The

The other defendants, as under-tenants to *Alderton*, put in the like answers.

PENFOLD
against
ALDERTON.
The evidence
read.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the depositions; and certain letters patents, dated the twenty-ninth of July, in the eighth year of *William the Third*; and a lease of the rectory or parsonage house of *Sompting*, dated the twentieth of November 1698, made between the said *Lord Cutts* and the plaintiff's father; and also the probate of the will, dated the third of February 1706; and an agreement, dated the eleventh of September 1711, made between *Mr. Brownsword*, vicar of the said parish, and the defendant *Alderton*, touching the payment of tithes and offerings belonging to the said defendant;

IT IS ORDERED BY THE COURT, that the defendants do account with the plaintiff for the tithes for the time alledged in the bill; and that it be referred to the deputy remembrancer to take and report the said account.

The tithes decreed.

BURY, *Baron*.
PRICE, *Baron*.
MONTAGUE, *Baron*.

BLENNERHAYSETT against SHELLEY, Bart.

HILARY TERM
2. GEO. I.

Suffex, 21st February 1715.

THE bill stated, that the plaintiff had been, for four years last, rector of the rectory of *Patching*, in the county of *Suffex*, and was entitled to the tithes of coppice wood and other wood, and furze, arising, &c. within the said parish and titheable places thereof; that the defendant, was owner of a great wood ground or coppice ground, called *Patching Downs* or *Patching Wood*, within the said parish, and in the year 1714, had felled and cut and carried away divers parcels of coppice woods and other woods and furze to near one thousand loads, without setting out the tithe thereof, or making any satisfaction for the same; that a bill was heretofore brought in this court by *C. French*, then farmer of the tithes of the parish of *Clapham*, against the said defendant's late father, for tithes of wood growing on *Patching Wood* aforesaid, and he did, by his answer, insist, that the said wood, called *Patching Wood*, or *Patching Downs*, did lie within the parish of *Patching*, and had, time out of mind, used to pay tithes to the rector of *Patching*, and not of *Clapham*; with which answer the said plaintiff *French* was so well satisfied, that he dismissed his said bill, and paid costs to the defendant *Shelley*, and also to *Mr. Farmer*, rector of *Patching*, who was also a defendant; that the defendant refused to satisfy the plaintiff for the tithes of the said wood and furze by him felled as aforesaid, on pretence of a lease made to him by the

The wood, called *Patching Downs*, or *Micbell Grove*, in the county of *Suffex*, lies wholly in the parish of *Patching*, and no part thereof in the parish of *Clapham*.

BLENNER-
HAYSETT
against
SHELLEY.

the present rector of *Clapham*. The bill therefore prayed a full discovery, and a recompence for the said tithe wood and furze.

The defendant confessed, that the plaintiff might be rector of *Patching*, and entitled to the tithes of coppice wood, underwood, and furze, arising, &c. within the said parish and the titheable places thereof, and that he had caused to be cut and carried away divers parcels of coppice wood and other wood and furze growing upon some part of a coppice called *Mitchell Grove Coppice*; but whether the said coppice be known by the name of *Patching Wood* he knew not; that he had cut no other wood or furze; that the tithe thereof might come to twenty-two pounds, and better; and he conceived, that the plaintiff had no right or title to the tithes of the said woods, the said coppice lying within the parish of *Clapham*, and not in *Patching*; and that he had paid all his tithes arising therein to the rector of *Clapham*, he having made a composition with him for the same. And he insisted, that the said woods and wood grounds are in the parish of *Clapham*, and that the plaintiff is not entitled to the tithes thereof.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs taken in the cause; and a bill of the fourth year of *William the Third*, *French v. Shelley*, and also the answer; and on full debate;

IT IS ORDERED BY THE COURT, that it be referred to a trial at law, wherein the issue to be tried shall be, "Whether the wood called *Patching Down*, or *Mitchell Grove*, or any and what parts thereof, do lie within the parish of *Patching*, or titheable places thereof, or not?"

In pursuance of the said order, a trial was had, and a verdict given for the plaintiff, whereby it was found, that the wood in question, and every part thereof, is within the parish of *Patching*, and titheable to the plaintiff, as rector of the same parish.

The cause now came on, the fifth of *December* 1717, for further directions.

IT IS ORDERED, that the defendant shall account with and satisfy the plaintiff for the value of the tithes of all the wood and furze by him felled and cut in the said wood and wood grounds in question during the several years in the bill charged.

BURY, Chief Baron.
PRICE, Baron.
MONTAGUE, Baron.

PANCHARD

PANCHARD *against* FREE.TRIN. TERM,
2. GEO. 1.*Suffolk, 6th July 1716.*

THE plaintiff, as rector of the parish and parish-church of *Hasketon*, in the county of *Suffolk*, stated, that for thirty years past he had been rector of the said parish, and entitled to receive all the great and small tithes, and all offerings and duties arising within the places belonging to the said parish; that by virtue of a lease from *E. Jenny*, impropiator of the tithes, both great and small, arising from the lands belonging to the manor of *Thorpe Hall*, whether they be in the said parish of *Hasketon*, or in any other adjacent parish, he hath a good right to take all the tithes arising from the lands and places within the said manor; that the defendant, about *Michaelmas* 1698, entered on and occupied, as he now does, certain lands holden of the said manor, which of right ought to pay, and beyond time memorial have paid the tithes, either in specie or by agreement, to such persons as were the lessees of the said impropiated tithes; that the defendant, since such his occupation of the said lands, renewed several sorts of grain, and depastured the same with cows and horses and other cattle, for which he ought to have paid yearly the tithes thereof to the plaintiff; that the defendant, at the year 1707, entered upon and occupied certain arable and pasture lands and meadows, all which said places are lying within the said parish and the titheable places thereof; that during the said time he had yearly growing wheat, barley, and other sorts of grain, and had turnips, which he pulled and carried away to his cattle, and had grass, which he made into hay, and had several other species of tithes of great value, which ought to have been paid to the plaintiff in kind, or some rate or composition for the same, but which he refused to do. The bill therefore prayed, that the plaintiff might have a full discovery, and an account of all the defendant's said tithes.

The rector of *Hasketon*, in *Suffolk*, claims tithes of the parish of *Hasketon*, and of the manor of *Thorpe Hall*.

The plaintiff prayed process against the defendant; but he stood out all process of contempt; and the bill being read to him a third time, he refused to appear, and to name an attorney; and whereas by an order of court made the twenty-first of *May* 1715, it was ordered, that the said bill should be taken *pro confesso*; and that it should be referred to the deputy to take the account.

The defendant stands out all process; and the bill being read three times, it is taken *pro confesso*;

In pursuance of which order, the deputy made his report, dated the nineteenth of *June* last.

And now upon reading the said order and report, and no counsel appearing for the defendant,

IT

PANCHARD
against
FREE.
and the tithes
decreed.

IT IS ORDERED BY THE COURT, that the said report be ratified and confirmed with costs ; and that the said defendant do pay to the said plaintiff nineteen pounds, five shillings, reported due for his said tithes.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.

TRIN. TERM,
2. GEO. 1.

BOWCHIER against DODDERIDGE.

Suffex, 4th June 1716.

The archdeacon
of Lewes, in Suf-
sex, is entitled to
a procuration of
6s. 8d. a-year
from the rector
of Watlington.

THE plaintiff, as archdeacon of *Lewes*, in the diocese of *Chichester*, in the county of *Suffex*, stated, that in right of his archdeaconry he is entitled to have and receive *procurations* from all and every of the rectors, vicars, curates, and other ecclesiastical persons having benefices therein, except such as have *lay impropriations*, yearly in every year ; that the defendant had been rector or vicar of *Watlington*, within the said diocese and the plaintiff's jurisdiction as archdeacon of *Lewes* ; that the said rectory is no *lay impropriation*, and ought annually to have paid him six shillings and eightpence for procurations. The bill therefore prayed a discovery, and payment of the same.

The defendant put in a *demurrer*, which, upon-hearing, was over-ruled. By his answer he said, that he knew not that the plaintiff was archdeacon as aforesaid, or that, by virtue of his office, he was entitled to have *procurations* from the rectors and vicars as aforesaid. He admitted, that he had been rector of *Watlington* for twenty years past, and that it is one of the small livings certified to be under fifty pounds ; and he said, that he believed the said rectory was not liable to pay the yearly sum of six shillings and eightpence ; but he admitted, that he had heretofore once paid seven shillings for *procurations* and for acquittances, and at another time six shillings and eightpence, to prevent law suits ; but insisted, that it was in his own wrong, and merely for peace sake.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and on reading the depositions ; and a record in the first fruits office, being an ancient book of the valuation of benefices, made in the twenty-sixth year of *Henry the Eighth*, whereby it appeared, that there is reprimed and taken out of the valuation of the rectory of *Watlington* six shillings and eightpence for an annual procuration payable to the archdeacon of *Lewes* ; and it also appearing, by the records of the said office, that the said archdeaconry is valued in the king's books at the sum of thirty-nine pounds, fifteen shillings, which payments are made and raised by the procurations that

are

are yearly paid to the said archdeacon out of the rectories and vicarages within the said archdeaconry;

Bowcher
against
DODDERIDGE.

THE COURT, being satisfied that there are six shillings and eightpence yearly due and payable out of the rectory of *Wathington*, for and as a *procurator* to the plaintiff as archdeacon of *Lewes*;

And it appearing, by the defendant's answer, to have been unpaid from 1700;

IT IS ORDERED, that the defendant shall forthwith satisfy and pay to the plaintiff six shillings and eightpence yearly for a *procurator* by him as rector of *Wathington*, and payable to the plaintiff as archdeacon of *Lewes*, with the arrears thereof from 1700 to and for this present year 1716, being sixteen years, amounting to the sum of five pounds, six shillings, and eightpence, together with costs to be taxed.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.

HILL against RUSSELL.

Kent, 29th June 1716.

TRIN. TERM,
2. GEO. 1.

THE bill stated, that the plaintiff, for eight years past, had been vicar of *East Malling*, in the county of *Kent*, and was entitled to all dues and profits thereto belonging; that by ancient endowment or prescription the plaintiff's predecessors were entitled to agistment tithes, and all small tithes in kind, or to some *modus* or customary payment in lieu thereof; that the defendant is an inhabitant, and for one year past had held several lands, gardens, orchards, and hop-grounds, and had fed dry cattle for hire for other persons, and had great quantities of milk and wool, and divers calves, colts, lambs, pigs, and other titheable matters, to the tithes thereof the plaintiff is entitled, but which the defendant had refused to pay. The bill therefore prayed a discovery, and satisfaction for the same.

The vicar of *East Malling*, in *Kent*, claims the tithes of agistment, and of hops.

The defendant admitted the plaintiff's institution and induction, and his title to the tithes of the vicarage; and said, that he was an inhabitant, but that he had never paid tithe herbage for the arable land when there was any herbage thereon; and insisted, that he was lawfully exempted therefrom; and as to the garden-ground, he insisted, that he paid the plaintiff his demands to *Michaelmas* 1713; and for the said year, he set forth what he had growing therein, and offered to pay his tithes for the same. He also stated, that he had paid up to *Michaelmas*

The defendant says, that no agistment tithe is due for arable land, when there was no herbage, though cattle were fed thereon;

1714,

HILL
against
RUSSELL.

and that the usage is to pay 2s. in the pound for hops, the vicar allowing for the carrying, drying, bagging, and other charges.

1714, for his tithes of cherries. But he admitted, that he had not paid for the tithe of his hops, because the plaintiff had insisted on two shillings in the pound of the price they were sold for, without making any allowance for carriage, drying, bagging, and other incidental charges; and that it was the constant usage in the parish to pay tithes for hop-grounds at ten shillings an acre, with which usage the plaintiff had frequently complied. He set forth the quantity of hops and other titheable matters he had.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon reading the proofs taken in the cause;

The defendant ordered to account.

Present,
BURY, L. C. B.
PRICE, B.
MONTAGUE, B.

IT IS ORDERED, that it be referred to his majesty's remembrancer of this court, to take an account of the several titheable matters and things demanded by the bill.

On the nineteenth of *February* 1716, the cause came on to be heard upon the report, dated the ninth of *February* when the plaintiff's counsel prayed that the report might be confirmed, and upon reading the said decree and report;

The report confirmed.

IT IS ORDERED, that the report be ratified and confirmed, and that the defendant do pay to the plaintiff five pounds, three shillings, so reported due for the respective titheable matters, by the said bill demanded.

THO. BURY,

TRIN. TERM,
2. GEO. I.

DODSON against NORTON.

Suffex, 30th June 1716.

The rector of *Husterpoint*, in *Suffex*, claims every tenth meal of milk; the tithe of oats grown on barren lands; and the grain which had fallen to the bottom of the tithe cocks of wheat and barley.

THE bill stated, that the plaintiff, as rector of *Husterpoint*, in the county of *Suffex*, was entitled to all tithes, oblations, offerings, and duties arising therein; that the defendant, from the year 1712, had been an inhabitant and occupier of arable land, meadow, and pasture ground, and had sowed the arable with oats and barley, and reaped and carried away the oats yearly, without setting out the tithes thereof, or making any compensation for the same; that when the plaintiff went to take the tithes away, as set out in loose cocks, the defendant refused to permit him to take the loose corn which lay at the bottom of the said cocks; and that hereby he lost about a third of his tithes; that the defendant also depastured a number of cows and other profitable cattle, from which he had calves and milk, and had many sheep, from which he had wool, but had refused to set out the tithes thereof, or to make any compensation for the same; that he also kept to agistment or pasturage oxen and other unprofitable cattle, and also kept poultry, the tithes whereof were due to the plaintiff; that he was also entitled

titled to *Easter* offerings, and other dues, all of which the defendant had refused to pay. The bill therefore prayed a discovery of his titheable matters, and why the defendant had refused to let him take away the loose corn, and that he might account for the same.

DODSON
against
NORTON.

The defendant, by his answer, admitted, that the plaintiff was rector, and entitled to all great and small tithes, and said, that from *Michaelmas* 1712, he had occupied several lands, and in 1713, had sowed several acres with oats, wheat, and barley, and had reaped the same, and set out the tithes thereof, which the plaintiff had carried away, except the loose corn as aforesaid, which he was not entitled to by custom. He also said, that he held divers lands, fertile as well as barren, in the said parish, and in the adjacent parishes; and that he had caused the tithes of his milk, and other tithes, to be set out, which the plaintiff might have had; but he denied, that any *Easter offerings* were due.

The defendant says the rector is not entitled to the loose corn, &c.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading several proofs taken in the cause on both sides;

IT IS ORDERED BY THE COURT, that the defendant do come to account with the plaintiff, for and touching the tithes of milk, which the Court declared ought to be paid every tenth meal, and not the tenth of every milking; AND ALSO for the tithes of the herbage and agistment of the defendant's barren and unprofitable cattle; AND ALSO for the tithes of the oats suggested by the defendant's answer to have grown upon barren land; AND ALSO for the value of the loose barley and oats at the bottom of the tithe cocks, which the defendant obstructed the plaintiff in taking and carrying away; AND ALSO for *Easter offerings* for the defendant and his family, for and during the time in the bill required; the plaintiff to have his costs taxed out of the costs; the defendant to be allowed such costs as he hath been put to by reason of the examination of witnesses, touching the tithes of wheat, hay, wool, and eggs, as are demanded in the bill.

The tithes decreed,
Present,
BURY, L. C. B.
PRICE, B.
MONTAGUE, B.

with costs, except as to the tithes of wheat, hay, wool, and eggs.

KEDDINGTON against ADAMSON and Others.

Suffolk, 14th June 1716.

TRIN. TERM;
2. GEO. 1.

THE bill stated, that *W. Edgely*, clerk, rector of the parish church of *Stradishall*, in the county of *Suffolk*, by indenture, dated the fifth of *March* 1711, between him of the one part, *M. Richardson*, of the second part, and the plaintiffs of the third part, in consideration of a certain annual rent reserved and made payable to *Richardson*, and of the covenants therein to be performed

The plaintiff claims the tithes of *Stradishall*, in *Suffolk*, by virtue of demise thereof from the rector.
S. C. Bun. 2.

KEDDINGTON
against
ABAMSON
AND OTHERS.

formed by the said plaintiffs, did demise to the plaintiffs all the rectory or parsonage house, outhouses, yards, &c. with several fields, closes, pieces and parcels of glebe, arable, meadow, and pasture, thereto belonging, and all the tenths and tithes both predial and personal (except of wood, underwood, timber and timber trees, bollings and topwood, quicksets, fences, thorns, and bushes thereon), for the term of six years at sixty-nine pounds a-year, payable to the said *Richardson*; that, by virtue of the said demise, the plaintiffs were entitled, during the term, to all manner of tithes, both great and small, yearly arising therein, except as before excepted, but that the defendants, all of them, being inhabitants of the said parish, or occupiers of several mills, lands, meadows, pastures, woods, &c. out of which small tithes are due to the plaintiffs, do severally deny and refuse to pay to the plaintiffs any small tithes, or any recompence for the same. The bill therefore prayed a discovery of their small tithes, and an account for the same.

The defendant
French says he
compounded
with the rector,
and offers to pay
according to such
composition.

The defendant *French* said, that it might be true, that such a lease was made to the plaintiffs, and that they might have a right to receive the tithes according to such rates, customs, *modus*es, and prescriptions as, time out of mind, have been used, except from such parishioners, who before the said lease had, by agreement with the said *W. Edgeley*, compounded for the same for three years, which he had made with the said defendant and others; and he submitted to the validity of the agreement, and set forth his titheable matters and the values thereof.

Simpson and *Cagamore*, plead in
bar,

that they also
compounded
with the rector,

The defendants *Simpson* and *Cagamore* pleaded in bar to the demands in the bill.

The defendant *Simpson* pleaded an agreement made between *W. Edgeley* and him, in June 1711, that he should retain all his own great and small tithes for three years, and pay him, in lieu thereof, four pounds, five shillings, at *Michaelmas* yearly, which he paid him at *Michaelmas* 1711, but that *Edgeley* refused to accept the same the two following years, though tendered to him.

The defendant *Cagamore* pleaded his agreement for two pounds, two shillings, and sixpence, a-year, and one pound, fifteen shillings, for the other defendant *French's* lands and one *Goose*.

and insist on
their plea;

Both the defendants insisted on their said plea, and submitted to the judgment of the court, and set forth the rates or the *modus*es, to the same effect as the other defendant *French*.

but the plea is
over-ruled.

The plea was argued in *Michaelmas* 1713, and over-ruled, because the defendants had not therein set forth their titheable matters and things, and the values of those tithes.

And they an-
swer and set forth
certain *modus*es.

The defendants put in their further answer, and set forth the quantities and values of their tithes, and the *modus*es as in *French's*

French's answer, viz. for each cow and calf and the whole profits thereof, one shilling; for each farrow cow, eightpence; for each hen, three eggs; for each cock, two eggs; for wintering sheep, two shillings and sixpence a score; and for each lamb that falls within the said parish, if the same were fed the whole winter there, sixpence; and that the said rates and *modus*es are payable at, or about, *Michaelmas* yearly.

KEDDINGTON
against
ADAMSON
AND OTHERS.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard the twenty-second of *February* last, when, on opening the above-named defendants answer, and on reading the depositions of divers witnesses taken on both sides, and on debate of the matter;

A question arose, whether the above-mentioned parol agreements, being for three years, were good in law so as to bind the rector and the plaintiffs (a), and upon debating thereof many reported cases, relating to the same point, were cited, and the cause was ordered to stand over to the next day; on which day counsel on both sides were again heard; and, after many arguments thereupon, it was ordered to stand further over, the Court not being ready to give their opinion thereon; and on the cause coming on again this day,

A question arises whether the compositions, being by parol, are valid.

THE COURT declared, that the agreement made with the defendants *Simpson* and *Cagamore*, for their tithes for the three years, is good and valid in law.

and declared that they are.

WHEREUPON IT IS ORDERED BY THE COURT, that the defendant *Simpson* shall pay and allow to the plaintiff eight pounds, ten shillings, for the two years composition for his tithes, in the bill mentioned, for the years ending at *Michaelmas* 1712, and *Michaelmas* 1713, to be deducted out of the costs to be paid by the plaintiff to him, who is to have his costs taxed.

The defendants ordered to pay accordingly.

AND IT IS FURTHER ORDERED, that the defendant *Cagamore* do pay to the plaintiffs twenty-seven shillings, in full for his composition for one year's small tithes, ending at *Michaelmas* 1712, (the plaintiffs having taken the great tithes in kind that year) without costs on either side.

AND IT IS FURTHER ORDERED, that the defendant *French* do pay to the plaintiffs five pounds, in full for his tithes demand-

(a) BUNBURY in his report of this case, says, that it was held by BURY and PRICE, Barons, that a composition, by way of retainer by parol, can be good only for one year, being by way of contract, but that a lease of tithes even for one year by parol, would be void. MON-

TAGUE, Baron, seemed to be of opinion, that an agreement between the parson and his parishioners, for a year, by parol, would be good, though not for life, being only an agreement, that he will not sue the parishioners, for so many years for tithes. S. C. Bunb. 2.

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cd

KEDDINGTON
against
ADAMSON,
AND OTHERS.

ed, with their costs taxed unto the time of his answer only, and without any further costs on either side.

And upon reading the affidavit of service of *subpœna* on the defendants *How, Bridgeman, and Wood*, and reading their answers,

IT IS FURTHER ORDERED BY THE COURT, that the said defendants do account with and satisfy the said plaintiffs for the value of their respective tithes, and that the deputy remembrancer do take the said account, unless they shew cause to the contrary, first paying five pounds, costs of the day, before they be heard.

On the twenty-sixth of *November 1716*, upon reading the above order, and no counsel appearing for the defendants, IT IS ORDERED BY THE COURT, that the order be made absolute as against them, with costs, to be taxed for the plaintiffs.

TRIN. TERM,
2. GEO. I.

WOLRIDGE against HENNA and Others.

Cornwall, 29th June 1716.

The vicar of *Mevagissy*, in *Cornwall*, claims tithes of *pilchards*.

See another cause
T. 6. GEO. 3.

THE plaintiff, as vicar of the vicarage and parish church of *Mevagissy*, in the county of *Cornwall*, stated, that about the month of *December 1709*, he was instituted and inducted therein, and by virtue thereof, or of some ancient endowment, usage, or custom, time out of mind used, ought, of right, to have had and received all the tithes of hay, wool, lamb, hops, fish, and other small tithes, oblations, offerings, and vicarial duties; that, by custom and usage immemorial, he and his predecessors, vicars of the said church, have been endowed with, and ought to enjoy, the tithe of all *pilchards* caught at sea, or brought into and cured in the said parish, and of all other fish caught or brought into the said parish, by way of merchandize, or for sale, or otherwise; that the defendants being all of them fishermen of the said parish, had for several years used therein boats, nets, and seynes for catching of *pilchards* and other fish; that each of them in the said years caught great quantities of *pilchards*, &c. which were brought into and cured in the said parish, the tithes whereof were worth one hundred pounds; that, from *December 1710*, the defendants had not paid or compounded with the plaintiff for any tithe fish, or other small tithes, and that they endeavour to deprive the plaintiff of the same. The bill therefore prayed a full discovery of their boats, &c. *pilchards*, &c. and an account for the same.

The defendants say the vicar accepted the benefice of *St. Just*,

The defendants said, that they believed the plaintiff was duly instituted, &c. into the said parish, and that he is still incumbent and therefore is not, from that time, entitled to the tithes of *Mevagissy*;

there,

there, but that they have heard, that, since his induction thereto, he hath been instituted and inducted into the rectory of the parish of *St. Just*, in *Roseland*, and that both the said churches being benefices with cure of souls, his institution into *Mevagissey* is void, and all his pretensions to tithes since that time unfounded; but they admitted, that the plaintiff is lawfully entitled, if legal vicar, to all the tithes of hay, wool, hops, lambs, and other small tithes, obventions, offerings, and vicarial duties, the tithes of fish only excepted, for that neither the plaintiff nor any of his predecessors ever had any right to the tithe of fish, or ought to have the tithe of pilchards, or of any other fish caught at sea, or brought into the said parish by way of merchandise, nor had he ever received the tithes of pilchards, or other fish in specie, nor had the same been compounded for; that if however the plaintiff had any right to such tithes, they believed, that the vicars for the time being never were entitled to have any tithe in specie, and if they were entitled to any thing, it was to a *modus* only of sixteen shillings and eightpence, and no more, for every *seyne*, consisting of two boats and nets, which was due from the owners of such *seynes*, but that nothing was ever paid or demanded as due from the labourers, or for their share, being one half, or for the *pillage fish*, which was what layed under the *seyne*, and what remained after sweeping, which the men took as their perquisite, nor for any *strangled fish*, or fish caught by the head in the nets; that, since the plaintiff's incumbency, they have had no concern in the *seyne fishery*, but have been concerned in the *pilchard fishery*, with drift nets, and that for all the pilchards caught by the head and strangled, no tithe, or any thing in lieu thereof, is payable to the vicar. They confessed, that the plaintiff and his predecessors had been paid a trifle for every net, for quietness sake, but not as their due, and that they, the defendants, had paid three shillings and sixpence, and two shillings and sixpence, for every net, which sums the plaintiff had accepted in full of all his demands, until last winter's fishing season, before the commencement of this suit, and that they are willing to pay the said sums; and the defendants in some measures set forth their quantities and values.

WOLRIDGE
against
HENNA
AND OTHERS.

but, that if he is legal vicar of *Mevagissey*, he is not entitled to the labourers moiety or tithe of pilchards, or of pillage fish, and strangled fish;

and only to a *modus* of 16s. 8d. for every *seyne* of two boats and nets each;

and to 3s. 6d. for every net used in fishery.

Two former cases read.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading a decree, dated the ninth of *December*, in the thirty second year of *Charles the Second*, in this court, between *W. Gwavas*, Esq. plaintiff, and *John Teage*, and others, defendants (a); also another decree in this court, dated the twenty-first of *June*, in the twenty-first year of *Charles the Second*, between *John Saintarubyn*, Esq. plaintiff, and *R. Slade* and others defendants (b), and on reading the proofs taken in the cause, and on mature and deliberate debate of the matter,

(a) See vol. 1. page 203.

(b) See vol. 1. page 102.

WOLRIDGE
against
HENNA
AND OTHERS.
The tithes of
pilchards and o-
ther small tithes
decreed.

IT IS ORDERED BY THE COURT, that the defendants shall respectively account with the plaintiff for their several and respective tithes in kind of all pilchards, and other fish whatsoever, caught at sea and brought into the said parish, according to the values thereof, and all other tithes and offerings whatsoever, due from them respectively, according to the proofs in the cause, or as the defendants have confessed in their respective answers; and it is referred to the deputy to take the said account.

On the fourth of *July* 1717, in pursuance of the above order, the deputy made his report, and upon reading the said decree and report, without exceptions;

IT IS ORDERED BY THE COURT, that the report be ratified and confirmed, and that the said defendants shall respectively pay to the said plaintiff, the several sums reported due from them, amounting in the whole to eight pounds, thirteen shillings, and fourpence halfpenny.

THO. BURY.
RO. PRICE.
JAS. MONTAGUE.
J. FORTESCUE ALAND.

TRIN. TERM,
2. GEO. I.

CRISP *against* THEOBALD; *et à Contra.*
Norfolk, 30th June 1716.

The rector of *Ellingham*, in *Norfolk*, claims a piece of ground as part of his glebe; the tithes of turnips; *Easter* offerings; and of the toll of corn ground in a water mill.

See *Crispe v. Mickleburgh*,
vol. i. page 517.

THE bill stated, that the plaintiff, about forty years since, was instituted, &c. into the rectory of *Ellingham*, in the county of *Norfolk*, and thereby entitled to all tithes and glebe lands therein; that the defendant, ever since the month of *September* 1695, had occupied one acre of glebe, and, in the year 1713, had thirteen acres of turnips, which he fed with cattle; that, in the same year, he used a water mill for grinding corn, and ground great quantities, and took toll or money for grinding the same; that, during the same time, he had kept milch cows, which had milk and calves, and some heifers not reared for the pail, for all which he ought to have paid tithes; that he had occupied, for two years past, two acres of meadow, for which there ought to have been paid a customary payment of one penny an acre; that he had not paid or satisfied the plaintiff for any of the said titheable matters, nor for his *Easter* offerings, nor had he paid him any rent for the glebe land, but had set up divers pretences to avoid the same. The bill therefore prayed to have a discovery, account, and satisfaction in the premises.

The defendant says he hedged out the ground claimed as glebe

The defendant admitted the plaintiff to be rector; and said that, about nineteen years since, he hired of *Sir H. Hicks* a farm land, and is willing to pay the tithes; but pleads a *modus* as to the mill.

and

and land in the said parish, and in the parish of *Mettingham*, in *Suffolk*, with a water mill, and from the first hiring of the said lands had paid rent for the same many years without any claim being made by the plaintiff; that about eleven years since, being told by the plaintiff, that there were two roods of glebe land in this farm, called *Mill Farm*, he, about nine years since, caused the same to be ditched out, and from that time he had never held or sowed the same; that he knew not what crops or benefits had been made of the same, nor had the plaintiff ever demanded any thing for it till two years since; and that he had offered to pay him any reasonable recompence for the same. The answer then set forth the number of acres of turnips the defendant had; and that he had paid yearly to the plaintiff, for his corn mill, thirty shillings or forty shillings, for the tithes of the toll; and that he was willing to pay the plaintiff for such tithes as were due to him, if he knew what they were.

CRISP
against
THEOBALD;
et c. Contra.

The defendant filed his cross bill against the plaintiff and *Dorothy Chambers*, widow, praying a discovery of what tithes he owed him, and also of the glebe land, and to produce the tithe book or terrier of the glebe lands and customs in the parish, which he had from the defendant *Chambers*: to which bill the defendants put in their answers.

The defendant
files a cross bill.

The plaintiff, in the original cause, replied; the defendant rejoined; and divers witnesses were examined in that cause; and on reading the several proofs taken therein;

IT IS ORDERED BY THE COURT, that the defendant *Theobald* do account for the tithes of the toll of the grist of the mill, and of the turnips, calves, and milk, and also of barren cattle, and for *Easter* offerings for himself and such of his family as were liable to the payment thereof, from the time of the plaintiff's last receipt, with costs.

The tithes of the
mill, the turnips,
and *Easter* offer-
ings decreed.

And as to the glebe land claimed by the plaintiff in the original bill, the defendant shall be dismissed without costs.

The claim, as to
the glebe dis-
missed.

AND IT IS FURTHER ORDERED, that the cross bill be dismissed with five pounds costs, as to the defendant *Chambers*, and with costs to be taxed for the defendant *Crisp*, by the deputy remembrancer, to whom it is referred to take the account and to tax the costs.

The cross bill
dismissed.

THO. BURY.
RO. PRICE.
JAS. MONTAGUE.

MICH. TERM,
3 GEO. I.

Pocock *against* SPARKES.

Suffex, 8th November 1716.

The rector of *Middleton*, in *Suffex*, claims the whole of the tithes arising on *Elmore Farm*.

THE bill stated, that for several years past, the plaintiff had been instituted, &c. into the rectory and parish church of *Middleton*, in the county of *Suffex*, and had duly served the cure there, and was thereby well entitled to all manner of tithes, both great and small, and to all other duties and profits belonging thereto; that the defendant *Sparkes*, for several years past, had held a farm called *Elmore Farm*, consisting of divers lands meadow and pasture, and had ploughed and sowed great part thereof, with corn and grain, and had mowed grass and made the same into hay, and fed and depastured dry and unprofitable cattle, and had kept cows, sheep, geese, and fows, and had milk, calves, lambs, &c. and that he also had apples, pears, &c. of great value, the tithes whereof were due to the plaintiff, or some rate, *modus*, or composition, in lieu thereof, but which he had refused to pay; that the defendant *Sir John Miller*, pretends, that the plaintiff is only entitled to half the tithes, and particularly to only half the tithes of the said farm, and declares, that he will pay no tithes.

The defendant says, that the rector is not entitled to all the tithes, for that his landlord is entitled to the *Portion of Trine*, and to a moiety of the corn tithes of *Elmore Farm*, except of a certain parcel called *the Holly Breads*.

The defendant *Sparkes* admitted, that the plaintiff was rector as aforesaid, and entitled to receive all the tithes, both great and small, belonging thereto; and said, that he occupied *Elmore Farm*, which he had ploughed and sowed, and converted the product thereof to his own use, without setting out the tithes thereof; that he neither knew or believed that the plaintiff, or any of his predecessors, were entitled to all the tithes of corn and grain yearly arising therein, for that the defendant *Sir John Miller* was, for the time aforesaid, seised in fee of a portion of tithes called the *Portion of Trine*, or the *Portion of Trine Barn*, and of a moiety of all the tithes of corn and grain belonging to the said farm, other than seventeen acres and a half, called *the Holly Breads*, which are parcel of the said *Portion of Trine*, or that, from *Michaelmas* 1709 to 1710, the plaintiff claimed right to more of the corn tithes of the said farm than the whole of *the Holly Breads*, and half of the corn tithes of the residue of the said farm, and that therefore he, at the plaintiff's request, did take to farm the same of him, and all the small tithes arising on the said farm, and all manner of great tithes, on twenty acres of land, called *Standens*, for the year in the bill mentioned, at fourteen pounds a-year, which he averred he had offered to pay to the plaintiff, but that he had refused to receive it; that about the time when he made such agreement with the plaintiff, he took to farm of the defendant *Sir John Miller*, his portion of the tithes of *Elmore Farm*, (other than *the Holly Breads*) for the said year, for nine pounds, which he had paid him; that, for the

the said year, he had no other tithes than those mentioned in his answer; and that the said *Sir John Miller*, and all those whose estate he hath in the said portion of tithes have time immemorial had and enjoyed the same.

Pocoen
against
SHARKES.

The defendant *Sir John Miller* admitted, that the plaintiff was rector, and believed that *J. Dobell*, being seised in fee of and in one barn, called *Trine Barn*, and one clofe of land, of one acre, in the parish of *Yapton*, and also of a portion of tithes, called the *Portion of Trine*, in the parishes of *Yapton*, *Tortington*, *Binsfred*, *Clinging*, and elsewhere, and with the said barn usually enjoyed, did, by lease and release, convey the said premises to *Richard Tawke* for his life, with remainder to *J. Tawke* and his heirs, with other, the remainders, as in the answer mentioned; that *Richard Tawke* soon after died; that *J. Tawke* with *K. Tawke* did, by lease and release, convey the premises to him, and his heirs, and assigns for ever; and that one half of all the tithes of corn and grain, yearly arising in and upon all the lands, called *Elmore Farm*, (except *Holly Breads*), was, at the time of the said conveyance so made to him, and for all the time, whereof the memory of man is not to the contrary, parcel of the said premises. He denied, that the plaintiff, or any of his predecessors, were or was entitled to all the tithes of corn and grain yearly arising within the said parish, and said, that he had let to farm, to the other defendant, his portion of tithes, as before-mentioned, and averred, that neither the plaintiff, or his predecessors ever received more than one half of the tithes of corn and grain of the said farm. He admitted, that from *Michaelmas* 1710, he had received and taken the tithes belonging to his said portion, but said, that he never knew them distinct from other parts of *Elmore Farm*, the *Fur Field*, and *Little Field*, nor whether he, or any for his use, had received any tithes thereof, nor when the same was converted into arable, nor of any distinction of new broke ground, or ancient tillage, in respect of his portion aforesaid, which portion does not include all the tithes in *Yapton*, but several parcels in several parishes. He denied all knowledge that any part of *Elmore Farm*, paid tithes of corn and grain to the plaintiff, or his predecessors, only excluding the defendant, and those whose estate he hath in the portion aforesaid; and he said, that he did not know where the occupiers of the said farm do christen, or bury, or do other parochial duties, whether at *Middleton* or elsewhere.

The owner of
Elmore Farm
shews his title to
the portion and
the moiety.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon opening the bill, and reading an order, whereby the defendants undertook to appear gratis, and no counsel appearing for them, and upon reading the said answer;

IT IS ORDERED BY THE COURT, that it be referred to the deputy to take an account of what is due from the defendants

The tithes de-
creed nisi.

Pocock
against
SPARKES.

for the tithes arising upon *Elmore Farm*, from *Michaelmas* 1709 to *Michaelmas* 1710, unless cause be shewn to the contrary, the said defendants first paying to the plaintiff five pounds costs, for this day's attendance.

Decree made absolute.

On the twenty-eighth of *January* 1716, upon reading the foregoing order, and no counsel appearing for the defendants, IT IS ORDERED BY THE COURT, that the same be, and it is hereby made absolute.

On the sixteenth of *July* 1717, in pursuance of the said orders, the deputy remembrancer made his report, bearing date the ninth of *July* instant, and it was prayed by the said plaintiff's counsel that the said report might be confirmed; and upon reading the decrees and report, and counsel attending for the defendant *Sir John Miller*, praying that he may be excused from costs, and no counsel appearing for the defendant *Sparkes*,

Costs.

IT IS FINALLY ORDERED BY THE COURT, that the report shall be ratified and confirmed; and that the defendant *Sparkes* shall forthwith pay to the plaintiff seventeen pounds, one shilling, for the tithes arising on *Elmore Farm*, in *Middleton*, between *Michaelmas* 1709 and 1710, in the said report mentioned; and that the defendants, or one of them, do pay to the plaintiff his costs of this suit, to be taxed by the deputy remembrancer.

HILARY TERM
3. GEO. I.

BENSON against WATKINS and Others.

Middlesex, 20th *February* 1716.

The impropriator of *Bromley Saint Leonards*, in *Middlesex*, claims tithes in kind.
S. C. Bunb. 10.

THE bill stated, that the plaintiff, for three years past, had been seised in fee of the rectory impropriate of the parish of *Bromley Saint Leonards*, in the county of *Middlesex*, and was entitled to all tithes arising therein, and in the titheable places thereof, or to some composition in lieu of the same; that the defendants, for two years past, had occupied lands in the said parish, and had corn and hay thereon, without setting out the tithes thereof, and had also kept, fed, and depastured oxen, bullocks, cows, heifers, and other dry, barren, and unprofitable cattle, and also had sheep and cows which had calves and lambs, milk and wool, and also had fruit and other herbs, and all sorts of small tithes, and several hop-grounds, the tithes of which amounted to a considerable sum, which the defendants had converted to their own use, pretending that tithes in kind are not payable, but that some *modus*, or customary rate, is payable in lieu thereof. The bill therefore prayed a discovery, and an account of the tithes.

The defendants say, the impropriator had accepted of *modus*

The defendants say, that they believed the plaintiff was possessed of the said rectory, and well entitled to all tithes, both to *Michaelmas*, 1714,

great

great and small, and to other offerings arising therein, or to some rate, *modus*, or composition in lieu thereof, and that they had paid the plaintiff the several *moduses* following, in lieu of tithes, to *Michaelmas* 1714. But they admitted, that the plaintiff's agent had given information that he would take his tithes in kind.

BENSON
against
WATKINS
AND OTHERS.

The defendant *Watkins* said, that from *Michaelmas* 1714 to *Michaelmas* 1715, he had enjoyed twenty-seven acres of upland, and had sown the same with barley; that for twenty-four acres, part thereof, which lie in *Nunnery Fields*, he paid thirty-five pounds a-year, and for the other three acres, six pounds a-year; that the crop was not worth more than one hundred pounds, nor the tithes thereof more than ten pounds; that before the filing of the bill he had offered, and by his answer tendered, five pounds, eight shillings, for the tithe thereof, which is four shillings an acre for the barley; and he insisted, that a certain *modus* of four shillings an acre, had, time out of mind, been yearly paid for the said land when it was sown with barley, or other summer corn; and five shillings an acre when it was sown with wheat, or other winter corn, and so proportionable for less than an acre; and that the said *modus* was payable at the feast day of *Saint Michael the Archangel*, yearly. The defendant *Watkins* also said, that he enjoyed three acres of *Upland*, part of *Pye Field*, at five pounds a-year, which he had fed and depastured with horses and cows; that the pasturage thereof was not worth six pounds, the tithe not above twelve shillings; and that soon after *Michaelmas* last, he had offered one shilling for the said tithes, which was after the rate of fourpence an acre; and he insisted upon a *modus* of fourpence an acre for the same, when depastured, and two shillings and sixpence an acre, when mowed and made into hay. He also said, that he had thirteen acres of marsh land lying in *East Marsh*, at twenty-nine pounds, ten shillings, and that he had mowed the same, and made the grass into hay, which was not worth above forty pounds, and the tithe four pounds; that, soon after *Michaelmas*, he offered one pound, nineteen shillings, for the said tithes, which is after the rate of three shillings an acre; and insisted upon a *modus* of three shillings an acre for the said land, when the same is mowed; and so proportionably for less than an acre; and for so many as were not mowed, but fed, threepence an acre, yearly, payable at *Michaelmas*, yearly. And he said, that he did not occupy any other lands; and that he had not any other titheable matters.

They offer to pay the tithes of barley in *Nunnery Fields*, at 4s. an acre;

and insist on a *modus* of 4s. an acre for summer corn, and 5s. an acre for winter corn;

and on 4s. an acre for the assignment of cattle in *Pye Field*, and 2s. 6d. an acre when it is mowed;

also 4s. an acre in lieu of tithe hay of *Marsh Lands*.

The other defendants put in the like answers, and insisted upon nearly the same *moduses*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the depositions, and on full debate;

It

BENSON
against
WATKINS
AND OTHERS.
The tithes in
kind decreed.

IT IS ORDERED BY THE COURT, that the defendants do severally account with, satisfy, and pay to the plaintiff for the value of the tithes of the several matters and things claimed by the bill, which they had during the time in the bill stated, within the said parish, and the titheable places thereof; and it is referred to the deputy remembrancer to take the said account.

On the sixteenth of *June* 1718, in pursuance of the said decree, the deputy made his report, dated the sixteenth of *May* last, and upon reading the decree and report, without exceptions,

The report made
and confirmed.

IT IS ORDERED AND DECREED, that the report be ratified and confirmed, and that the defendants do pay to the plaintiff the several sums reported due to him, for the value of the tithes in question, and also the costs of this suit, to be taxed by the deputy remembrancer (*a*).

THO. BURY.
RO. PRICE.
JA. MONTAGUE.

(*a*) Bunbury says the reason why the *modus* of five shilling an acre for wheat and rye, four shillings an acre for summer corn, and three shillings an acre for meadow, &c. were disallowed was, that

they were too rank, and too near the value of the land, especially as these *modus* were supposed to commence when land was at a much less value, and money at a much greater. S. C. Bunb. 10.

HILARY TERM
3. GEO. 1.

UNDERWOOD against GIBBON.

Suffolk, 31st January 1716.

The plaintiff, as lessee of the tithes of *St. Gregory's* and *St. Peter's*, in *Sudbury*, in the county of *Suffolk*, claims the tithes of agistment of saddle horses in the common called *King's Marsh* and *Portman's Croft*. S. C. Bunb. 3.

THE plaintiff, as son and administrator of his father, filed his bill, setting forth, that the intestate, being lessee of the tithes arising within the parish of *Saint Gregory*, in *Sudbury*, under *N. Jekyll*, impropiator of the said parish church, and under *O. Andrews* and others, impropiators of the said parish church or chapel of *Saint Peter*, did, in *Hilary Term*, in the eleventh year of *Queen Anne*, exhibit his bill against the said defendants, charging the defendant *Gibbon*, to have occupied lands within the said parishes, or one of them, for one year, and to have sown the same with wheat, rye, barley, or other grain, and that he had also grafs growing thereon, which he had made into hay, and had carried the same away without setting out the tithes thereof; and that he had kept several cows and sheep, from which he had calves, lambs, milk, and wool; and had kept and depastured several horses and dry cattle, and had other titheable matters and things, for which tithes were due to the plaintiff; The bill also charged the other defendants with having the like titheable matters; and prayed an account and satisfaction for the said tithes.

The

The defendants *Gibbon* and *Sparrow* said, that for the said year they did keep and depasture, upon a piece of ground called *King's Marsh*, and a piece of ground, sometimes called *Portmans Croft*, and now called *the Common*, in or near the *Borough of Sudbury*, sometimes one or two saddle-horses a-piece, and never more at a time; that the defendant *Voice*, during that time, kept one saddle horse in the same grounds; and that the tithe for each horse was not yearly worth more than one shilling: and they insisted, that tithes were not due and payable to the plaintiff for the same, in case he can make out a title to the same; for that the grounds called *King's Marsh* and *Portman's Croft*, otherwise *the Common*, were anciently granted for the use and benefit of the burgesses and commonalty of the borough of *Sudbury*, by *Richard De Clare, Earl of Gloucester and Hereford*, who was owner of the borough and of all tithes arising therein; that it had been usual for the said corporation to set certain rates on the cattle depastured on the said grounds, and to apply the money thereby raised to the use of the poor of the said borough, who were not able to keep any cattle thereon; and they insisted, that tithes are not due to the plaintiff for the said grounds; and also, that they do not lie within the parishes, but that they are extra-parochial, and not lying in any parish, as are several other lands, in or near the town of *Sudbury*. They also said, that there are other grounds in the parish of *Saint Gregory*, wherein the freemen of the borough of *Sudbury* have right of common to depasture their cattle after the first crop of grass is cut, and after corn hath been carried off; and that, in respect that the tithes of such first crops of grass and corn are paid to the impropiators of *Saint Gregory's*, the freemen of the said borough have been and ought to be discharged, from the payment of tithe herbage for the grounds last mentioned.

The defendants *Gibbon* and *Voice* denied, that they had, during the said time, any cows, sheep, calves, lambs, or other titheable matters and things.

The defendant *Sparrow* confessed, that during the said time he had occupied divers lands in *Saint Gregory's* parish, and had corn, grass, and fruit, and said that he had compounded for the tithes thereof, and that he had the plaintiff's receipt for the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard the fourteenth day of *July* 1715, when, upon reading the proofs, it was ordered that a case should be made; but soon after the making of such case, the plaintiff's father died, and the plaintiff filed his *bill of revivor*, and the proceedings being revived by order of the Court, a case was made and agreed upon by counsel on both sides, in the following words, viz.

UNDERWOOD
against
GIBBON.

The defendants say, that *Clare*, earl of *Gloucester*, the owner of the borough, and of all the tithes arising therein, granted the common tithe free to the corporation, and that they take cattle to feed therein at certain prices, and apply the produce to the use of the poor of the said borough.

One of the plaintiffs dies, and the proceedings are revived.

THE

UNDERWOOD
against
GIBBON.

A case is made
by counsel on both
sides, for the o-
pinion of the
Court.

The question
stated,

and argued.

The Court de-
cree, that the de-
fendants are not
to pay tithes.

THE CASE. "The plaintiff exhibits his bill, as lessee of the impropriate rectory of *Saint Gregory*, and of the parish church " or chapel of *Saint Peter's*, in *Sudbury*, (thereby entitling him- " self to all manner of tithes within those parishes) against the " defendants for tithes, and, amongst other things, for the " tithes of the agistment and pasturage of horses, and other " barren cattle; to which the defendants *Gibbon* and *Spar-* " *row*, by their answers, severally answer and confess, that they " and each of them, between *Christmas* 1711 and *Michaelmas* " following, kept and depastured upon certain lands called " *King's Marsh*, and upon a piece of ground formerly called " *Portman's Croft*, otherwise *the Common*, sometimes one and " sometimes two saddle horses a-piece; and the defendant " *Voice* doth likewise admit, that within the time aforesaid, he " did keep and depasture on the said grounds, one saddle " horse, and no more; and the several defendants insist that no " tithes are due for depasturing the said horses, for that the " said lands were anciently given by *Richard De Clare, Earl of* " *Gloucester* and *Hereford*, who was owner of the borough of " *Sudbury*, and all tithes arising therein, for the use and bene- " fit of the burgesses and commonalty of *Sudbury*, and that the " corporation have usually set certain rates upon all cattle kept " there, and that the monies raised by such rates have been paid " and applied to, and for the use of such of the the poor freemen " of the said borough, as were not able to keep any cattle thereon, " and that the defendants, and every of them, have paid such " rates for the same." THE QUESTION IS, Whether tithes for the agistment and pasturage of the defendants horses upon *King's Marsh* and *Portman's Croft*, confessed by the defendants, are due and payable by them?

The cause came on again the fifth of *July* last, and after long debate thereon, the Court then ordered the cause to stand over for the opinion of the Court; and the same standing over accordingly to receive the judgment of the court this day,

THE COURT declared, that no tithes were due or payable by the defendants for their saddle horses, agisted and depastured upon *King's Marsh*, and *Portman's Croft*, in the pleadings and in the said case mentioned.

IT IS THEREUPON ORDERED AND ADJUDGED, that the said bill be, and is hereby, absolutely dismissed out of this court, with costs, to be taxed for the said defendants, by the deputy of his majesty's remembrancer (a).

THO. BURY.

RO. PRICE.

JA: MONTAGUE.

(a) See other causes respecting these parties and others, *Underwood v. Drew*, 10. Ann. *Underwood v. Gibbon*, 11. Ann. vol. 1 page 534. 536. *Underwood*

v. Sparrow, 13. Ann. vol. 1. page 536 *notis*; and *Upcher v. The Mayor of Sudbury* Trinity Term, 19. Geo. 3.

EYRE *against* PIKE.

HILARY TERM

3. GEO. 1.

Southampton, 17th February 1716.

THE bill stated, that for thirteen years last past, the plaintiff had been rector of the parish church of *Martyr Worthey*, in the county of *Hants*, and entitled to all tithes arising and growing due therein, and in the titheable places thereof, or to some composition in lieu of them; that the defendant is executor of *N. Pike*; that the said *N. Pike*, in the years 1714 and 1715, occupied several messuages and lands therein, and particularly a field called *Ashdown*, containing forty acres, and three acres adjoining thereto, and grew thereon corn, grain, clover, and other titheable matters, for which he ought to have paid tithes, but that he died, and that the defendant being requested to pay the same, as executor, had refused the payment thereof. The bill therefore prayed, that the defendant might discover the particulars of the titheable matters and things, which the testator had upon his said lands, and the values, and admit assets, and account for the same.

The rector of *Martyr Worthey*, in the county of *Hants*, claims the tithes of a field called *Ashdown*, and three acres adjoining thereto in kind.

The defendant admitted the plaintiff to be rector, as in the bill is stated, and to be entitled to such tithes as his predecessors had been entitled to; that the testator, in the said years, held the said field, and the three acres adjoining; that in 1715 such quantities of the said ground were sown by the testator with corn and grain, and that such other titheable matters did arise thereon, as are stated in the answer, but he insisted, that the said lands were discharged of tithes; for that the said lands were part of the priory of *St. Swithin's*, in *Winton*, and at the time of the dissolution of the said priory were discharged of tithes; for that the said priory was one of the greater abbeys or priories and vested in THE CROWN by the statute 31. *Hen. 8.*; and that, by virtue thereof, all the lands which were part of the possessions of the greater abbeys or monasteries were ever after to remain, and be acquitted of the payments of tithes as they were before the dissolution; that the said lands were formerly wood grounds, and that, fourteen years since, the underwoods growing thereon were grubbed up, and the grounds converted to tillage. But he confessed, that from that time, the occupiers thereof had paid to the plaintiff, and his predecessors, the tithes of corn, grain, and grass, arising thereon, until the year 1715, when the testator refused payment.

The defendant says, the lands were formerly wood-land, and parcel of the monastery of *St. Swithin*, and so discharged of tithes, though tithes had been paid since they were grubbed up, and converted into arable land.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides, and upon reading letters patent, made the thirty-third year of *Henry the Eighth*, of the grant of the possessions of the priory of *Saint Swithin's*, under which the defendant's testator claimed the lands out of which the

The evidence read;

EVER
against
PIKE.

plaintiff demanded tithes ; and reading the depositions ; and upon consideration thereof, and of what was insisted on by the counsel of both parties,

and the tithes decreed.

IT IS ORDERED AND DECREED BY THE COURT, that the defendant shall account with and satisfy the plaintiff for the value of the tithes of the corn and grain, and other titheable matters and things, which did grow and arise upon the said close called *Asbdowne*, and all other the grounds held and occupied by the testator, within the said parish, during the years in the bill mentioned, and that it be referred to the deputy to take the said account.

HILARY TERM
3. GEO. 1.

REDDINGTON against NICE.

Suffolk, 27th February 1716.

The plaintiff, as lessee of the rector of *Stradisball*, in *Suffolk*, claims all tithes in kind.

THE bill stated, that *W. Edgeley*, clerk, had been rector of the parish church of *Stradisball*, in the county of *Suffolk*, for ten years, and that he, and all claiming under him, have been, and are of common right, entitled to and ought to receive all manner of tithes, both great and small, arising, &c. in the said parish, and the titheable places thereof ; that the said *William Edgeley*, being rector, did by indenture tripartite, dated the fifth *March 1711*, demise and to farm let to the plaintiffs the said tithes both predial and personal, of what nature or kind soever, yearly belonging thereto, for six years, at sixty-nine pounds a-year, if he should so long live ; that by virtue of the said lease, the plaintiffs have been, and are entitled to all manner of tithes of corn, grain, hay, and all other tithes whatsoever since *Michaelmas 1711*, and to all rates, compositions, and customary payments for the same ; that the defendant, with several others, from the said *Michaelmas*, have been owners and occupiers of several messuages, lands, tenements, and hereditaments, and have had divers quantities of corn, grain, hay, grass, and several sorts of fruit, and have kept and depastured several milch cows, sheep, mares, and sows, from which they have had calves, lambs, and other titheable matters ; the tithes whereof, and all compositions, ought to have been paid to the plaintiffs by the said demise, but which the defendants had refused to pay, pretending that their lands are tithe free, or covered by a *modus*. The bill therefore prayed a discovery, and an account of the quantities, qualities, and values of their tithes.

The defendant says, that he compounded with the plaintiff for the tithes of part of his lands, at 2l. 7s. 6d. a-year, and that the other parts are tithe free.

The defendant *Nice*, by his answer, said, that the said *William Edgeley*, during the time in the bill mentioned, may have been and still may be rector of the said parish, and that as such he and those claiming under him, are entitled to all tithes of corn, grain, and hay, and other tithes belonging to the said rectory, but that he knew not that he had demised to the plaintiffs the tenths or tithes, either predial or personal, belonging to the said rectory, but

but had heard, that the plaintiff *Reddington* had some demise or lease of the tithes from the said rector; that the defendant, believing that the said tithes did belong to the said *Edgeley*, and that he had power to let or dispose thereof, he, about *June 1712*, came to an agreement with the plaintiff *Reddington* for all his great and small tithes and other dues, belonging to the said rectory, for six years, from *Michaelmas 1711*, to and for the only proper use and behoof of him, his heirs, and assigns, and that *Reddington* gave him a receipt for the same, excepting for those lands which are tithe free; that neither at the time of the said agreement nor at any other time, did he, nor doth he now pretend, that there was any ancient *modus*, sum of money, or composition, due or payable in lieu of any manner of tithes belonging to the rectory, save as follows, *viz.* for every milch cow and her calf, one shilling; for every sow and ten pigs, one pig, if but seven the same, if fewer none for tithes; for every lamb, sixpence; for every ten geese, one, if but seven the same, if fewer none for tithes; of wool, one tenth part; for every acre of grass mown, sixpence; of garden fruits, one tenth; as to herbage and dry cows, he knew not the custom, because he never had any, but that he had agreed with the rector and his lessees, for all his great and small tithes, and had paid them a composition for the same, according as he could make an agreement, which was sometimes twenty five shillings, or thirty shillings, but never before the said agreement with the plaintiff *Reddington*, at two pounds, seventeen shillings, and sixpence, a-year. He confessed that at, and long before the said agreement, he did and doth insist, that divers lands within the bounds of the said parish are discharged from paying any tithes of corn and grain growing thereon, to the rector there; and that for all the time mentioned in the said bill, he, the defendant, was and is well entitled to all tithes of corn and grain growing upon the same, as a portion of tithes heretofore belonging and payable to the rector of *Denston*; for that *John Ray*, of *Denston*, was seised to him and his heirs in fee simple of and in all tithes of corn and grain yearly growing, &c. in or upon all, every, or any the closes or pieces of land or pasture, or any part of them, or any of them lying or being within the bounds or perambulations of *Stradishall* aforesaid, to the said church, rectory, or impropriate parsonage of *Denston* belonging, and being so seised, the said *J. Ray*, by indenture, dated the fourth of *June 1607*, between the said *J. Ray* and *Richard Scriven*, in consideration of forty pounds paid to *Ray's* father, did grant, bargain, and sell to the said *Richard Scriven*, his heirs, and assigns for ever, all those the said tithes of corn and grain yearly, to be growing, &c. in or upon all, every, or any of the closes, pieces, or parcels of land or pasture, or any part thereof in *Stradishall*, particularly mentioned, bounded, and abutted in a schedule to the said indenture, and all his reversion, remainder, right, title, &c. to the said *R. Scriven*, his heirs, and said

REDDINGTON
against
NICK,

and he sets forth
several *moduses*;

and entitles him-
self to the lands
that are tithe free
by conveyance
from the rector
of *Denston*.

REDDINGTON
against
NICE.

assigns, at two pounds, seventeen shillings, and sixpence a year, for ever; and that about *March* last, he paid him the same for one year, for all his tithes ending at *Michaelmas* 1712; that the said tithes, at the time of executing the said indenture, did belong and were due and payable to the rector of *Densford*, and not to the rector of *Stradishall*; that the said *R. Scriven*, by virtue of the said indenture, and payment of the said forty pounds, became and was absolute purchaser of such tithes, to him and his heirs, for a valuable consideration. He said, that he believed the said tithes, by several descents, conveyances, &c. did descend or come to *S. Brise* and *Elizabeth* his wife, for their lives, with divers remainders over, several years before the plaintiffs do by their bill pretend to be lesses of any tithes demanded by them, for a valuable consideration; that, by deed, dated the twenty-eighth of *November* 1705, the said *S. Brise*, being tenant for life of all the said tithes, did demise to the defendant all that messuage or manor-house, called *Shordlowes*, with out-houses, &c. arable lands, meadow, pasture, ley, and feeding grounds, and all the right of common, the great and little marshes, and the tithes and quit rents belonging thereto, as the same messuage, &c. were lying and being in *Stradishall* aforesaid, to hold the same from *Michaelmas* then last past, for nine years: and thereupon he insisted, that he was well entitled to all the said tithes as aforesaid, and he set forth the said grounds and lands, and his titheable matters growing thereon.

The bill dismissed.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides, and upon reading the depositions, and also the deed, dated the fourth of *June* 1607, and the schedule annexed, and on full debate thereon;

IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the bill shall be, and the same is hereby dismissed, with costs, to be taxed for the said defendant.

THO. BURY.
JA. MONTAGUE.

N. B. See another cause, p.

EASTER TERM,
3. GEO. 1.

JONES against TIPPING.
Berkshire, 23d May 1717.

The vicar of
Markham, in
Berkshire, claims
tithes.

THE bill states, that for fourteen years past the plaintiff had been vicar of the parish church of *Markham*, in the county of *Berks*, and entitled to all small tithes, and all other vicarial tithes, dues, and offerings, which ought to have been set out by all the inhabitants, and paid to the vicar; that the defendant, for ten years past, had been owner, in his own right, of a messuage, farm, lands, orchard, and garden, and in each year had kept milch cows, which had calves and milk, and also had sheep, which had lambs and wool, and had depastured other sheep, and sold

told the same before shearing-time, for which the said plaintiff is entitled to an herbage tithe; that he had kept sows which had pigs, and had yearly made hay, and had several other titheable matters, which, for seven years past, he had detained from the plaintiff, and had also kept back his tithes from his father for three years before. The bill therefore prayed to have a discovery, and account for the same.

JONES
against
TIPPING.

The defendant *G. Tipping* said, that he and his father-in-law had been owners, occupiers, and possessors of the messuage, farm, and land in the bill mentioned; and that he believed his father, in his life-time, had paid the plaintiff all his dues. He admitted, that he, in right of his wife, was his administrator, and had assets sufficient to satisfy the plaintiff's demand; and averred, that he had tendered to him six guineas for the value of all his small tithes, together with fifty shillings for his costs.

The defendant
tenders 6l. 6s.

To which answer the plaintiff took exceptions, for that the defendant had not set forth the quantities and values.

The defendant submitted, and put in a second insufficient answer; and before the plaintiff could set down the former exceptions, he, the defendant, died, and left the other defendant *Catherine* his executrix.

and dies.

The plaintiff thereupon filed his *bill of revivor* against her, and she appeared and put in her answer, and confessed assets, and did not oppose reviving the former proceedings.

Proceedings re-
vived.

The plaintiff, on the twenty-eighth day of *November* last, in regard he could have no discovery of quantities or values from the defendant, was willing to take the six guineas offered by her testator, with costs to be taxed; and the defendant was ordered to shew cause.

The plaintiff of-
fers to take the
6l. 6s. as he
could not get a
discovery; but
the offer is re-
fused.

And thereupon, on the seventh of *December* last, she shewed cause, and refused to accept the plaintiff's offer; and thereupon the order was discharged, but with proviso, that notice should be taken that the plaintiff would have accepted of the offer of the defendant *G. Tipping* in full of his demands for small tithes, with his costs to be taxed; and it was ordered that the former proceedings should stand revived; and that the plaintiff be at liberty to set his cause down, upon bill and answer.

The defendant being duly served with process of *subpoena* to hear judgment, the cause came on to be heard this day; and on reading the order of the seventh day of *December* last;

IT IS ORDERED BY THE COURT, that the defendant *C. Tipping* shall forthwith pay to the plaintiff the sum of six guineas, in full of his demand for tithes, as well due from her said testator as

The 6l. 6s. or-
dered to be paid,
and the execu-
trix to pay costs.

JONES
against
TIPPING.

from her father, together with his costs, to be taxed by the deputy.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
J. FORTESCUE ALAND.

TRIN. TERM,
3. GEO. T.

WHITE against KEATE and Others.

Berkshire, 4th June 1717.

The vicar of Hagbourne, in Berkshire, claims the tithes of corn, grain, and hay; the agistment tithes; and all other vicarial tithes arising in Hagbourne Down, Hagbourne Park, and Church Mead.

THE bill stated, that the plaintiff, for twenty-eight years past, had been vicar of the parish of Hagbourne, in the county of Berks, and was entitled to receive from all the parishioners all tithes, both great and small, belonging to the said vicarage; that the plaintiff and his predecessors, by virtue of some ancient endowment, or by custom, time out of mind, ought to have all manner of tithes of corn, grain, and hay (a), on all ancient inclosures, and particularly from certain inclosed lands, called Hagbourne Down, Hagbourne Park, and Church Mead, lying in the said parish; all the tithes for feeding barren cattle; the tithes of milk arising from all milch cows fed on the said ancient inclosures; and the tithes of wood and underwood growing on the said inclosures or in the hedge-rows; that all the said tithes had been, for many years, duly set out and paid to the plaintiff and to his predecessors, or some compensation made to them or him for the same; that they had also received all small tithes of calves, pigs, pigeons, fruit, and other small tithes (except wool and lamb), arising in the said parish; that the defendants Afridge and Langford had, for twenty-eight years last past, been, and still were, occupiers or tenants of Hagbourne Down; that they yearly cut and carried away much corn, grain, and hay, the tithes of all which yearly belonged to the plaintiff, and were yearly worth five pounds; that they had yearly fed thereon barren cattle and milch cows, and cut thereon wood, the tithes of which belonged to the plaintiff, and were yearly worth three pounds; that when the defendant Afridge first became owner or tenant of Hagbourne Down, one J. Keate, deceased, was tenant or proprietor of the rectory of the said parish, and so continued until he died in 1702, from which time the defendant Keate, his widow, continued proprietor thereof; that she and her said husband, pretending to be entitled to the tithes arising on the said Hagbourne Down, in right of the said rectory, had prevailed upon the other defendants to pay them the aforesaid tithes; that the plaintiff, in the year 1708, filed his bill against the said defendant M. Keate and Hyde, for the recovery of tithe hay on Hagbourne Park and Church Mead, and for the feeding of the said grounds; that they put in their answer thereto; that the cause was heard, and the defendants decreed to account for the tithes thereof, which

(a) See the case of Gray v. Sawyer, vol. i. page 147.

they

they did to that time ; that the defendant *Mary Keate* had, since the said decree, fed the said grounds with milch cows and other cattle, and had refused to pay the tithes thereof, pretending, that no tithe milk was due, but a *modus* of threepence cow; that if any such *modus* existed, it extended only to such milch cows as were fed in the commonable places in the said parish, and not to those that were fed on the *inclosures* and the said other grounds; that the defendant *Mary Keate* since the said decree had been occupier or proprietor of several orchards, and particularly of a new orchard, from which she had much fruit, beans, pease, grain, turnips, and pigeons, the tithes of all which belong to the plaintiff, and were yearly worth four pounds, which she refused to pay, pretending, that the tithes were due to the impropiator, and not to the vicar. The bill therefore prayed, that the said defendants may account for all the tithes they had in the said years; that the plaintiff's right to them may be established by the decree of this court; and that the defendant *Mary Keate* may admit assets, and set forth an inventory of her husband's personal estate.

WHITE
against
KEATE
AND OTHERS,

The defendant *Keate* admitted the plaintiff to be vicar of the parish, and as such entitled to all the vicarial tithes; and said, that she and her late husband were, and that she still was possessed of the rectory of the said parish, by virtue of a lease from *Lord Craven*, and as such entitled to the rest of the tithes arising in the said parish; and she insisted, that no tithe in kind was payable for milk or calves in the said parish to the plaintiff, but that a certain *modus* was, and for time immemorial had been paid to the vicar there, *viz.* threepence for every new milch cow fed in the said parish, in lieu of tithe milk; and for every farr milch cow, twopence; which payments were yearly made at *Lammas*; that the left shoulder of every calf fallen and killed was paid in the said parish; but if sold, the tenth penny of the value which the calf sold for; and if weaned, three halfpence at *Lammas* was payable to the vicar, in lieu of tithe calves; and she said, that this *modus* was in question by the plaintiff's former bill, and was fully proved; and she also insisted, that the said *modus* was general throughout all the said parish, and not limited to any particular places; and that no tithe milk or calf was paid there wherever the cows depastured there. She also said, that the tithes of corn, grain, hay, and wood, growing on *Hagbourne Down* always belonged to and was paid to the farmer of the said vicarage, and never to the vicar, save by mistake. She admitted such decree and pleadings as stated in the bill, and that the plaintiff was entitled to all small tithes, except wool and lamb, and tithes of milk and calf, for which the said *modus* was payable; and that a *garden penny* was payable, in lieu of the tithes of garden stuff. She also said, that she never was occupier of *Hagbourne Down*, but was of *Church Mead* and *Hagbourne Park* since the said decree, and had fed the same with milch cows, for which she had paid the plaintiff the said *modus*,

The defendant *Mary Keate*, as impropiatrix of the rectory of *Hagbourne*, insists on a *modus*, in lieu of the tithes of milk and calves;

and that the tithes of corn, grain, and hay, arising on *Hagbourne Down* belong to her as impropiatrix of the rectory; and says, that she occupies *Hagbourne Park* and *Church Mead*, the tithes of which she had tendered;

WHITE
against
KEATE
AND OTHERS.
that the or-
chards being
taken from the
common, the
tithes belong to
her ;
that she had not
fed any barren
cattle on the Park
or the Mead.

which he had accepted, except for the years 1713 and 1714, for which said years she tendered him elevenpence halfpenny and one shilling and twopence halfpenny, which he refused to accept; and therefore she set forth her titheable matters for the said two years. She also insisted, that no tithe hay was payable for hay cut in any of her orchards, for that they being taken out of the common the tithe thereof belonged to the impropiator. She said, that she had paid to the plaintiff a *garden penny*, which, by the custom of the said parish, is payable for the tithes of gardens. She also said, that since the said decree she had fed no other cattle but milch cows on *Hagbourne Park* and *Church Mead*; and, since this suit, only with horses for tillage, for which no tithe is payable, nor for any young breeding up for the pail, nor for sheep, the tithe wool and lamb being payable to the rectory. She also averred, that the several tenders were made before the commencement of the suit, and that she was ready to pay the same for the said tithes.

The other two defendants admitted the plaintiff to be vicar, and as such entitled to all manner of tithes, both great and small, arising out of all *ancient inclosures* within the said parish (except wool and lamb).

The occupiers
of *Hagbourne
Down* say, that
all tithes thereof,
except wool and
lamb, belong to
the plaintiff.

The defendant *Langford* said, that he had known *Hagbourne Down* for sixty years, and that it was during that time inclosed and used as pasture; that for most of that time the plaintiff's predecessor claimed all the tithes arising from the said down, except wool and lamb; that they were paid to him or compounded for, and he believed they were worth four pounds *per annum*; and that the plaintiff was paid them, as his predecessor had been, without any hesitation or denial; but that soon afterwards the defendant's late husband, who was then impropiator or tenant thereof, set up a title to the tithes of *Hagbourne Down*; that soon after such dispute, the defendant *Asfridge* took a lease of the said down, and not willing to contest the same had paid the defendant *Keate* four pounds a-year for the tithes of wool and lambs; that he held it three years, and that then the defendant *Langford* took it. He said, that whilst he was tenant thereof it was meadow and pasture ground; that he fed part of it with cows, and paid money in lieu of the tithe of milk in kind, but that he knew not how much, the same being valued among his privy tithes, but believed that it was one pound, one shilling a year. He insisted, that he had paid the plaintiff for all tithes yearly according to agreement; and that he had agreed with the defendant *Keate* for the tithes of wool and lambs.

An issue directed
to try, whether
the vicar is en-
titled to the
tithes of corn
and hay on *Hag-
bourne Down*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the depositions, and on debate of the matter, a *trial at law* was directed upon this issue, "whether the plaintiff, vicar of *Hagbourne*, or the
"impropiator,

“impropriator, is entitled to the tithes of corn and hay arising
“on *Hagbourne Down*?”

AND IT WAS ORDERED, that the defendant do account for all small tithes and titheable matters demanded by the bill (except wool and lamb), arising in the parish of *Hagbourne* during all the time in the bill demanded; the deputy to take the said account, and the costs to be reserved.

A trial was accordingly had, on the twenty-ninth of *July* last, and a verdict was given for the defendant, as appeared by the *poslea*.

After pronouncing the said decree, the defendant *Keate* presented a petition for a rehearing, setting forth, that she was aggrieved by so much of the decree, whereby an account was generally directed to be taken of all the small tithes and titheable matters demanded by the bill (except wool and lamb) arising in the said parish of *Hagbourne* during the time in the bill, for that no notice was taken in such decree of the *modus*es as to the tithes of milk, calves, and gardens, before mentioned; and she hoped, that she should be enabled to shew that the said *modus*es ought to be established, and that the account of the small tithes demanded by the bill ought to be taken according thereto from the time whereto the plaintiff was satisfied under the first decree, and only in respect of the particular closes, and not over the whole parish; and that the plaintiff should be examined upon interrogatories of what he had received, and the master should state to the court respecting the tenders, &c.

On the twelfth day of *February*, the defendant obtained the order for rehearing as to the matters above-mentioned, on payment of five pounds costs, which were paid; and upon reading the said petition and order, and the decree, and the former bill and answer in the pleadings mentioned; and also an order of the fifteenth of *July* 1711; an account of tithes; and a receipt dated the twentieth of *October* 1712; and on reading several proofs on both sides in this and the former cause, and hearing what could be alledged on both sides;

IT IS ORDERED BY THE COURT, that the defendant *M. Keate* be relieved upon her petition for rehearing; and that the several *modus*es mentioned in her said petition be established; and that the defendant do account for the tithes of milk, calves, and gardens in the pleadings mentioned, according to the said several *modus*es; and it is referred to the deputy to take the said account, and to certify the tenders made, and what the plaintiff has received.

As to the matters for which the issue was directed and tried, the plaintiff moved for a *new trial*; and the *poslea* being read, and MR. BARON FORTESCUE certifying to the court that the

WHITE
against
KEATE

AND OTHERS.

The defendant ordered to account for all small tithes in kind.

A verdict for the defendant as to the tithes of the *Down*.

The defendant procures a rehearing, and the *modus*es as to milk and calves and gardens are allowed and established.

The vicar moves for a *new trial*, but it is refused

WHITE
against
KEATE

judge was very well satisfied with the verdict, and that it was a fair and just one,

AND OTHERS.

and the bill, as
to the tithes of
Hagbourne Down,
dismissed.

IT IS FURTHER ORDERED, on the twenty-fifth of *February* 1717, that the said bill, as to such part thereof on which the said issue was directed and trial had, shall stand, and be, and is hereby absolutely dismissed, with costs both at law and in equity, to be taxed by the deputy remembrancer of this court.

Report in favour
of the defend-
ants.

On the thirteenth of *July* 1720, in pursuance of the said order, the deputy made his report, dated the thirtieth of *June* last, *ex parte* for the defendants, the plaintiff declining to bring in his charge; and upon reading the decree and report, and no counsel attending for the plaintiff, and no exceptions being taken thereto,

The report con-
firmed.

IT IS ORDERED BY THE COURT that the said report be ratified and confirmed; and that the defendant do forthwith pay to the said plaintiff one pound, two shillings, and fourpence three farthings, so reported due to the plaintiff; and that the bill do stand dismissed with costs, to be taxed by the deputy remembrancer of this court, to be paid by the plaintiff to the defendant *Mary Keate*.

Bill dismissed
with costs.

TRIN. TERM,
3. GEO. 1.

MASON against SIMPSON.

Gloucestershire, 4th *July* 1717.

The farm called
Yate's Court
Farm, in the
parish of *Yate*,
in the county of
Gloucester, is not
exempted from
paying either
great or small
tithes in kind.

THE bill stated, that the plaintiff had been, for twenty-eight years last past, rector of the rectory of *Yate*, in the county of *Gloucester*, and had duly officiated there, and become well entitled to all tithes, both great and small, arising therein, and in the titheable places thereof; that the occupiers of land there ought to set out their tithes; that during the year 1713, the defendant *Simpson* had occupied a certain farm, called *Yates' Court*, of which farm the defendant *Oravick*, who is lord of the manor, is owner; that the said *Simpson* had mowed part of the said farm, and had cut and carried away the hay thereof without setting out the tithe, or paying any thing in lieu of the same; and that the tithes so carried away amounted to ten pounds; that during the same year, the said defendant *Simpson* had kept cows and heifers, from which she had calves and milk; that she had also kept sheep, which had lambs and wool; that she had also depastured dry, barren, and unprofitable cattle on the said farm, and had several other matters, the tithe of which he, the plaintiff, is entitled to in kind, or to some composition in lieu thereof, and also to certain sums for *Easter* offerings for herself and her family; that the said defendants refused to pay the said tithes, on a pretence that they are not due in kind, but that a

modus of twopence a load for hay, or three pounds as a gross sum, are due for the said farm. The bill further charged, that the Court had twice determined the plaintiff's right to the tithes of the said farm (a); and therefore prayed a discovery of the quantities and values, and an account for the same.

MASON
against
SIMPSON.

The defendant *Simpson*, by her answer, admitted that the plaintiff was rector of the parish, and intitled to the small and great tithes; and said, that during the year 1713 she had occupied the said farm, and that she had mowed it, and carried away the hay, as stated in the bill; but that within the said parish (except in those parts of it which are called *Stanboroughs*, *Wapley*, and *Coddington*) there had been, time out of mind, paid to the rector, by the inhabitants and occupiers of land there, several *modus*es and customary payments in lieu of tithes; that no tithes in kind had ever been paid; but that the rectors there had always accepted the following payments in lieu thereof, *viz.* twopence a load for the tithe of hay, which she averred she had tendered to the plaintiff, and offered to pay him what more was due, according to the said custom, but that he had refused to accept of the same. The defendant further stated, that she kept on the said farm several milch cows which had calves, one ewe, and one lamb, and that she had wintered on the said farm several ewes and hogs, but had taken no account of the lambs; and that she had sows, pigs, and goslings; and she set forth the

(a) On the 23d of February 1708, Hilary Term, 7. Queen Anne, the plaintiff *Mason*, as rector of *Yate*, filed his bill against *Symonds* for the tithes of hay and corn arising on *Yate's Court Farm*. The defendant set up a *modus* of three pounds a-year in lieu of all vicarial tithes for the said farm; and said, that he had paid all his tithes for the year 1705 and 1706. He admitted, that in the year 1707 he had a crop of barley on a field called *Limehill*; and said, that the plaintiff had agreed to take the twentieth sheaf of the said crop of barley, in lieu of the tithes of that field for three years; but that the crop, when ripe, was so very poor and thin, he and the plaintiff had, by parol, settled the tithes thereof at one pound, five shillings; but that the said agreement never took effect; and that he was willing to account. THE COURT, after reading an order made the 11th of June 1707, for the plaintiff to accept the defendant's offer with costs of suit, ordered and decreed the defendant to account with the rector for the tithes of the barley on *Limehill*, and for hay and all other titheable matters arising of *Yate's Court Farm* in the year 1707 with costs.—On the 7th of July 1712,

Trinity Term, 11. Queen Anne, *Mason* the rector filed a bill against *Oxwith*, the lord of the manor and owner of *Yate's Court Farm*, of the value of two hundred pounds a-year, for the tithes of the same in the year 1710; the tithe hay of which, he said, was worth two shillings an acre. The defendant said, that tithes in kind were payable for those parts of the said farm which are called *Stanboroughs*, *Wapley*, and *Coddington*; but that for the remainder there were certain *modus*es payable in lieu of the tithes thereof; and he set up a *modus* of twopence a load in lieu of tithe hay; threepence a cow in lieu of tithe milk; twopence for a heifer; one penny for a foal; and sixpence halfpenny for his other tithes. But THE COURT declared, they were not satisfied, by the proofs, that the *modus*es insisted on by the defendant ought to conclude the plaintiff, or that there was any cause to direct a trial at law touching the same; and ordered and decreed the defendant to account with and satisfy the plaintiff for the tithes demanded by the bill: and he was directed to pay seventeen pounds, three shillings, and ninepence, by the remembrancer's report accordingly.

MASON
against
SIMPSON.

particular titheable matters; and said, that she had tendered to the plaintiff one pound, seventeen shillings, and tenpence, which was all that was due according to the custom; which tender he had also refused to accept, and insisted on tithes in kind. The defendant admitted, that the defendant *Oxwick* had indemnified her against the payment of tithes in kind; and insisted, that the plaintiff ought to be compelled to receive the said *modus*.

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and the cause came on to be heard the thirtieth of *June* 1715; and on reading the proofs in the cause,

THE COURT being divided in their opinion, the plaintiff's counsel were ordered to consider whether they would have a trial at law, or not; and if they declined the same, the chancellor of this court was to be attended to appoint a time when the cause should be heard before him.

The plaintiff declined the trial at law; and it was, on the plaintiff's petition, ordered, that the cause should be re-heard; which accordingly came on to be re-heard on the twenty-seventh of *June*, and the first of *July* instant, and this day; and on hearing what was alledged and insisted upon by counsel on both sides,

THE COURT declared, that *Yates Court Farm* is not exempted by any *modus* from the payment of tithes in kind.

IT IS THEREUPON ORDERED, that the defendant shall account with and satisfy the plaintiff for the tithes and titheable matters demanded by the bill; and it is referred to the deputy to take an account of the same.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
J. FORTESCUE ALAND.

TRIN. TERM,
3. GEO. 1.

SMITH against FREEMAN and Others.

Leicestershire, 20th *July* 1717.

The vicar of
Tilton, in *Leicestershire*, claims
tithes in kind.

THE bill stated, that the plaintiff being, in the year 1713, instituted, &c. into the vicarage of *Tilton*, in the county of *Leicesters*, was thereby entitled to all small tithes and dues arising therein, and in the titheable places thereof (*Wadborough* excepted); that the defendants had been inhabitants and occupiers of lands there, and had depastured sheep and ewes, and had lambs and wool; that they also had cows, which had milk and calves; that they had bullocks and other young beasts, and had agisted several flocks of sheep, and barren and unprofitable cattle,

cattle, and made great profit thereby, but had refused to pay the tithes thereof.

The defendants *Freeman* and *Brockby* admitted, that the plaintiff was vicar of *Tilton*, and entitled to receive small tithes ; but denied that either he or his predecessors had a right to such tithes as he claimed by the bill. They also admitted, that from the time of the plaintiff's induction they had had several calves, and had fed divers young improving beasts ; but denied, that they had any other titheable matters, or that they had refused to pay the plaintiff his tithes, according to the usage and immemorial custom of paying tithes in the said parish ; for that, time out of mind, there had been a custom, that on *Candlemas Day* yearly the vicar shall count the sheep in the parish, and that on the tithing-day, which is always, by the like custom, upon the third of *May*, the vicar shall have tithes of all lambs fallen as follows, viz. for any number under seven, one halfpenny a-piece ; if ten lambs, then one lamb ; and if seven, eight, or nine lambs, then he is also to have one lamb ; but in such case, he is to give one halfpenny a-piece to the owner for the number it wants to make up ten ; that also for sheep bought in and sold out between *Candlemas* and *clipping day*, he is to have one halfpenny, in lieu of tithe wool, for each sheep ; but for the wool of sheep wintered in the parish, and not sold before tithing day, he is to have, if ten fleeces, one fleece ; if seven, eight, or nine, one fleece, paying the owner one halfpenny a piece for the number of fleeces wanting to make up ten fleeces ; that no tithe of milk or of calves had ever been paid in kind, unless the occupiers of lands had ten calves in one year ; and in such case, the vicar was to have one ; but otherwise he was to be paid twopence halfpenny for each new milch cow, and for a strapper, one penny. They further said, that *J. Noell* is impropriator of the great tithes ; and that all the tithe of hay (except of the *Homesteads*), and all the tithe corn, belong to him. They further insisted, that no tithe ought to be paid for any cattle fed on the edish or after-grafs of grounds that had paid tithe, either of hay or corn, to the impropriator ; and that since the plaintiff had been vicar, they had constantly paid their tithes of corn and hay to the impropriator. And by a further answer they set forth the quantities and values.

The defendant *Freeman* set forth his quantities, and put in nearly the same answer as to the *modus*.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon reading the proof, and upon full debate,

IT IS ORDERED BY THE COURT, that the defendants do forthwith go to an account before the deputy remembrancer for all the titheable matters and things by them respectively had,

SMITH
against
FREEMAN
AND OTHERS.
The defendants
set up several
modus.

Tithes in kind
decreed with
costs.

SMITH
against
FREEMAN
AND OTHERS.

had, &c. within the said parish of *Tilton*, and the titheable places thereof, during the years in the bill charged.

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

TRIN. TERM,
3. GEO. 1.

WITHERINGTON against SHEARCROFT.

Essex, 16th July 1717.

The impropriator of *Thorpe*, in *Essex*, claims the tithes, both great and small, of *Thorpe Farm*, from the year 1709.

See *Witherington v. Harris*, vol. i. page 445.

THE bill stated, that *P. Nurse*, being seised of the rectory impropriate of *Thorpe*, in the county of *Essex*, and entitled to all the great and small tithes yearly arising within that parish, did, at *Michaelmas* 1709, and for several years before, demise the said rectory and tithes to the plaintiff, who had ever since held the same, and ought to have received all tithes of corn, grain, and hay, and all other great and small tithes, as farmer thereof; that the defendant had been, ever since *Michaelmas* 1709, owner and occupier of divers lands, meadows, and pastures, the tithes whereof, to the value of eighty pounds and upwards, ought to have been paid to the plaintiff; but that the defendant, instead of so doing, had always cut and carried away the same, as well as fire wood and other wood of considerable value, without setting out the tithes thereof, or making any satisfaction for the same. The bill therefore prayed an account for the same, and the values thereof.

The defendant says, that he had paid his small tithes to the vicar, and the great tithes to the plaintiff, by composition to *Michaelmas* 1711;

and that before, but not since, he had cut wood for firewood in his own house, which is not titheable.

The defendant said, that he had been informed that the said *Nurse* is seised of the said impropriation, and the tithes thereof; and that the plaintiff held the same as tenant to him; that by such title he had taken and received the tithes of corn, grain, hay, and all other great tithes arising therein, or a satisfaction for the same; that the small tithes belonged to the vicar, and that the present vicar had received the same in kind, or some composition for the same from him and the other parishioners. The defendant further stated, that he became an inhabitant of the said parish at *Michaelmas* 1707, and then entered upon a farm called *Thorpe*; that he treated with the plaintiff about the great tithes at eight pounds a-year, as a composition for all the tithes of the said farm; and that he had paid him the same until *Michaelmas* 1711; that from and after that time, the plaintiff had demanded the tithes in kind, and that he the defendant had, to *Michaelmas* last, duly set out the same, which the plaintiff might have taken away. He also stated, that he had not cut or sold any wood since *Michaelmas* 1711; but that before that time he had cut great quantities for firing in his own house, of which he had kept no account, as he believed firewood used in his own family is not titheable. He set forth his titheable matters, and averred, that he had paid to the vicar of the said parish his small tithes.

The

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and upon reading evidence, and hearing what could be alledged;

WITHERING-
TON
against
SHEARCROFT.

IT IS ORDERED BY THE COURT, that it be referred to the deputy remembrancer to take an account of the several titheable matters which the defendant had upon the said farm since *Michaelmas* 1709, and what tithes had been satisfied to the plaintiff.

The defendant
decreed to ac-
count for all
tithes unpaid
since *Michaelmas*
1709.

THE COURT FULL.

REYNELL *against* ROGERS.

TRIN. TERM,
3. GEO. I.

Suffex, 18th July 1717.

THE bill stated, that the plaintiff was, and had been ever since the year 1696 lawful vicar and incumbent of the parish and parish church of *Horsbam*, in the county of *Suffex*, and had carefully performed the cure there, and as such was entitled to all manner of tithes in kind, except the tithes of corn, and to all offerings, oblations, and obventions, yearly arising within the said parish and the titheable places thereof, or to some satisfaction for the same; that the defendant, from *Michaelmas* 1714, had enjoyed therein several parcels of land, consisting of meadows, pastures, orchards, and gardens, on which he had hay, hops, and fruit, and several other titheable matters, the tithes of which he ought to have paid to the plaintiff in kind, or made him some recompence for the same; but which he had refused to do. The bill therefore prayed an account and satisfaction for the same.

The vicar of
Horsbam, in *Suf-*
sex, claims tithes
in kind from
Michaelmas
1714.

S. C. Bunb. 15.
S. C. I. Rayn.
141.

The defendant said, that he believed the plaintiff was vicar of the said parish, and as such entitled to all manner of tithes, but not in kind; for that about the twentieth of *July* 1709 he and his parishioners came to an agreement that the said vicar, in consideration of his being discharged from paying anything to the poor rate, would accept of the old composition for their respective tithes arising therein as long as he continued vicar thereof; that he was discharged from the said poor's rate; and that the said composition, according to the defendant's proportion thereof, amounted to two pounds, five shillings a-year, in lieu and in full satisfaction for all tithes; that the plaintiff had acquiesced under the said agreement until *August* 1715, about which time he gave the defendant notice that he would take his tithes in kind, which was about three weeks before the hop harvest; and he hoped, that the plaintiff should be obliged to accept of the said composition.

The defendant
says, that in
1709 the vicar
compounded
with his parish-
ioners, in consi-
deration of being
exempted from
the poor's rate,
and that he had
paid his pro-
portion of such
composition to
August 1715,
when the vicar
gave notice to
tithe in kind.

The plaintiff amended his bill, and stated, that there was no such agreement; and the defendant put in his answer, and insisted that there was such an agreement.

The plaintiff
denies the ag-
reement.

The

DECREES IN TITHE CAUSES

REYNELL
against
ROGERS.

The agreement
dated 20th July
1709, for three
years, read.

Sufficiency of
the notice ob-
jected to.

Bill dismissed.

Reheard as to
tithe of hops.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the first of *December* last; when, on reading several depositions taken on both sides, and the said agreement, dated the twentieth of *July* 1709, for three years; and on the defendant's counsel insisting, that the plaintiff had continued the said agreement after the expiration thereof till and for the said year 1715; and that the plaintiff had not given the defendant sufficient notice that he would take his tithe hops in kind for that year; it was then ordered by the Court, that the plaintiff's bill should stand dismissed. But upon petition it was ordered, on the sixth day of *December*, that the cause should be re-heard as to tithe hops, upon payment of five pounds costs: which costs being paid, and upon reading the answer to the amended bill,

Dismissed with
costs.

IT IS ORDERED BY THE COURT, that the said bill be, and the same is hereby dismissed (a), with costs to be taxed.

THO. BURY.

RO. PRICE.

JA. MONTAGUE.

J. FORTESCUE ALAND.

(a) It is said, S. C. Bunbury, 15. that the bill was filed to compel the payment of tithe hops; that the defendant insisted on a composition; that the plaintiff replied, that he had given notice to determine the composition, and to take the tithe in kind; but that as the composition was for all the small tithes, and the notice was only to deter-

mine it as to the tithe of hops, the bill was dismissed; for that a composition cannot be determined as to part, and continued as to the rest. And PRICE, Baron, said, that it is time enough to give notice to determine a composition before the reaping of corn and picking of hops, but not after.

TRIN. TERM,
3. GEO. 1.

AYD against FLOWER.

Nottinghamshire, 27th July 1717.

The vicar of
Sturton, in *Not-*
tinghamshire,
claims tithes
for agisting
barren, and un-
profitable cattle,
on the lands cal-
led *the Cow Pas-*
ture and *the Horse*
Pasture; and on
eighty cattle
gates in *the Up-*
per Ing and *the*
Out Ing.

See S.C. Bunb. 7.
S. C. J. Rayn.
333. 142.

THE bill stated, that ever since *June* 1710, the plaintiff had been vicar of *Sturton*, in the county of *Nottingham*, and was entitled to all small tithes, and particularly to the tithes of barren, dry, and unprofitable cattle bred, fed, or depastured within the said parish, and to all monies payable for, or in respect, or in lieu thereof, or for or in respect of the herbage by them eaten; that the defendant, during the said time, had occupied several acres of pasture and meadow ground, in inclosures, the yearly pasturage tithes of which were worth ten pounds, and that he had stocked and enjoyed a common of pasture, for forty great beasts, in two large pastures, called *Cow Pasture* and *Horse Pasture*, the pasturage of which was worth ten pounds, and the tithe twenty shillings; that he had also eighty beast gates in two great meadows or pasture grounds, called *the Upper Ing*, and the *Out Ing*, each of which gates was worth five shillings a year; that the whole

AND
against
FLOWER.

whole was worth twenty pounds, and the pasturage thereof forty shillings; that he also did yearly keep and depasture in the said closes, commons, and gates, a number of barren, dry, and unprofitable cattle, viz. yearling calves, two year old calves, three year old barren heifers, three year old steers, oxen, bullocks, and barren fatted cows, and also colts, horses, mares, and geldings, not bred or kept either for the plough or the pail, or used or employed for those purposes within the said parish, the tithes whereof were worth eighteen pounds, and for which the plaintiff ought to have been answered two shillings in the pound, according to the yearly value of the said closes and gates, or at least of the grails eaten by such unprofitable cattle; but that the defendant conceals, and refuses to pay for the same. The bill therefore prayed that the defendant might account for the tithes aforesaid for four years, or make him some recompence for the same.

The defendant admitted the plaintiff to be vicar of *Sturton*; and said, that there is an augmentation of forty pounds a-year reserved and made payable to the vicar by the dean and chapter of *York's* lease of the parsonage and tithes of *Sturton* aforesaid, by means whereof the plaintiff had a sufficient maintenance; that he knew not whether the vicar is endowed with or entitled to all small tithes, but he admitted that he had, during his time, received the tithes of lamb and wool, and other small tithes; one penny for every strop milch cow; twopence for every new bared milch cow with the calf; and one penny for every foal. He denied, that the vicars of the said parish had ever received any manner of tithe, *modus*, or satisfaction for any barren, dry, and unprofitable cattle, or of the herbage by them eaten, save only what the present vicar had, within three years last past, prevailed on some of the parishioners to pay. He owned, that he had been tenant for the four years in the bill mentioned of twelve closes of meadow and pasture, two thirds whereof, one year with another had been mowed, and the other third depastured; that the *cow pasture* and *horse pasture* are commons belonging to the houses in the said parish, for all manner of cattle *sans nombre*, at all time in the year, excepting between *May Day* and *Midsummer Day*, in which time the *cow pasture* is kept only for horned great cattle; and he insisted, that there never had been any tithe paid for the herbage of unprofitable cattle, save as above; and that the small tithes of lamb and wool, &c. had been usually paid to the vicar in full satisfaction of all tithes. He averred, that the *Upper Ing*, and the *Out Ing*, are yearly mowed for hay and the tithe paid in kind to the lessee of the parsonage; that after the hay is got it is eaten in common by all the inhabitants, having common right, whether they have meadow there or not; that he rents thirty-six acres therein; and he insisted, that he ought not to pay any tithes for the pasturage of the *aftermath*, as that would be paying two distinct tithes in one year for one and the same thing. He set forth the quantity of land

The defendant says, that sufficient maintenance was provided for the vicar without such tithes; that no tithes had ever been paid for the agisting of such cattle; that the *Cow Pasture* and the *Horse Pasture* are commons without stint; that the tithes of lambs and wool have been paid in lieu of the said tithes; and that the *Upper Ing* and the *Out Ing* being yearly mowed, and the tithe hay paid to the improprator, no tithes are due for depasturing cattle on the aftergrass thereof.

AND
against
FLOWER.

land he held, and the number of cattle he possessed ; but said, that he knew not the exact value of them for each year, but believed, that the number of his profitable cattle exceeded the number of his unprofitable cattle, but that they had been so promiscuously kept he could not compute the value of the grass and herbage eaten by his unprofitable cattle ; but he said, that they had been more frequently kept with hay and winter food than depastured on pasture ground ; and he insisted, that as there never had been any such tithe demanded till within three years past, it ought not of right to be paid.

The evidence
read.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and on reading the answer, and the counterpart of the lease from the dean and chapter of *York*, impropiators of *Sturton*, dated the second of *December*, in the thirty-second year of *Charles the Second* ; also an ancient book from the register of the dean and chapter of *York* of the first presentation and endowment to the vicarage of *Sturton in the Clay*, in which presentation and endowment the said town of *Sturton* is called by the name of *Straton*, otherwise *Stretton in the Clay*, and which is dated the thirtieth of *June* 1460 ; also a book from the first fruits office, entitled *Valor Beneficium (a)* ; and also on reading several depositions taken in the cause ; and on full debate of the matter ;

Tithes for depasturing barren and unprofitable cattle, except on the aftergrafs of such grounds as have paid tithe hay, the same year, decreed ;

THE COURT declared, that tithes in kind are due, and ought to be paid to the vicar of *Sturton*, for all dry, barren, and unprofitable cattle, bred, fed, or depastured within the said parish of *Sturton*, other than on the *after-grafs* of such grounds within the said parish as are occupied by persons inhabiting within the said parish, and annually laid up for hay, and whereof tithe hay in kind is or ought to be paid to the impropiators of *Sturton* aforesaid, their lessee or undertenants.

and the deputy remembrancer ordered to take the account, and report the same.

IT IS THEREUPON ORDERED BY THE COURT, that the defendant shall account with and pay to the plaintiff all the tithes due and in arrear for his dry, barren, and unprofitable cattle, bred, fed, or depastured upon any grounds within the parish, other than in the *aftermath* or *aftergrafs* of such grounds which he has annually meadowed there, and whereof tithe hay hath or ought to have been paid in kind to the impropiators or their tenants for the time demanded by the bill ; and it is referred to the deputy remembrancer to take the said account. And it is further ordered, that the defendant shall pay to the plaintiff his costs of this suit, to be taxed by the said deputy remembrancer.

(a) It did not appear in this book, that the plaintiff's demand was mentioned therein among the other small tithes, S. C. Bunb. 7. S. C. I. Rayn. 142.

Pursuant

DURING THE REIGN OF GEORGE THE FIRST.

79

Pursuant to which order, the said deputy made his report, dated the sixth of *May* instant; and on reading the decree and report, and no exceptions being filed thereto,

AND
against
FLOWER.

The report
made;
and confirmed,

IT IS ORDERED BY THE COURT, on the fifteenth of *May* 1718, that the report be, and the same is hereby ratified and confirmed; and that the defendant do forthwith pay to the said plaintiff the sum of four pounds so reported due for the tithes of dry, barren, and unprofitable cattle, bred, fed, or depastured upon the grounds within the said parish of *Sturton* for the time demanded by the bill, with his subsequent costs, to be taxed by the said deputy remembrancer.

THE COURT FULL.

DELAVAL, Bart. against BLACKETT, Bart. and
Others.

TRIN. TERM,
3 GEO. 1.

Northumberland, 16th July 1717.

THE bill stated, that the plaintiff's late father being seised of the manor or lordship of *Seaton Delavall*, in the county of *Northumberland*, and of several lands and tenements, and of a moiety of all the tithes there, by lease and release, dated the twenty-first and twenty-second of *November* 1684, as in the said bill is set forth, conveyed the same to the plaintiff, who thereby became seised in, and lawfully entitled to the moiety of the said tithes, and ought to have had and received the same; that the duke and duchess of *Somerset* being seised of the other moiety of the said tithes, did, by lease dated the second of *December* 1700, demise the same to the plaintiff for twenty-one years; and that the plaintiff, at the defendant *Blackett's* request, by indenture, dated the twentieth of *December* 1701, demised the said last-mentioned moiety to him and *Dame Diana* his wife for the said term, if the said *Diana* should so long live; that she died in *October* 1713; and the said lease being thereby determined, the plaintiff became entitled to the said moiety from the time of the said *Diana's* decease; that all the defendants, from the death of the plaintiff's brother, had held and occupied several farms and lands within *Seaton Delavall*, or the titheable places thereof, from which they had several titheable matters and things; a moiety of which tithes, from his brother's death to the death of the said *Dame Diana*, and the whole tithes from that time, the plaintiff was entitled to, and ought to have had and received, but which the said defendant had refused to pay. The bill therefore prayed an account and satisfaction for the said tithes as above demanded.

The plaintiff
claims a moiety
of the tithes of
Seaton Delavall,
in *Northumber-*
land.

S. C. Bunb. 45.

The defendants who were tenants to *Blackett* being served with process of *subpœna*, appeared, and put in their answers.

The

DELAVALL
against
BLACKETT
AND OTHERS.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and on reading the deed of settlement, dated the twenty-second of *November* 1684, and the lease of the duke and duchess of *Somerset* of the moiety of the tithes, and the assignment thereof to the defendant *Blackett*; and on reading the defendant *Blackett's* answer; and on debate,

His title good.

THE COURT declared, that the plaintiff, under the said settlement, was well entitled to the moiety of the said tithes.

The tithes decreed.

AND IT IS THEREUPON ORDERED AND DECREED BY THE COURT, that the several defendants do severally account with and satisfy the plaintiff for the value of a moiety of the said tithes which have severally arisen and grown due upon the lands held and occupied within the said manor or lordship of *Seaton Delavall*, or the titheable places thereof, yearly, from the time of the death of the plaintiff's brother to and for the time demanded by the bill. And it is referred to the deputy remembrancer to take the said account.

Pursuant to the above order, and also an order made the twenty-second of *November* last, it was ordered, by consent of all parties, that the said deputy should make a report as to the plaintiff's demands upon the defendants. In pursuance of which orders the deputy made his report, dated the twenty-sixth of *November* last; and upon reading the said orders and report without exceptions, and no counsel attending for the defendants,

IT IS ORDERED BY THE COURT, on the ninth of *December* 1718, that the said report be, and the same is hereby ratified and confirmed; and that the said defendants do respectively pay to the said plaintiff the several sums reported due for the value of a moiety of the tithes of part of the lands in question.

The defendant
Sir J. Blackett
dies, and the suit
is revived.

After making the order of the sixteenth of *July* 1717, the defendant *Sir Edward Blackett* died, and left the defendant *John Blackett* his executor, whereby the said proceedings in the said cause abated. The plaintiff filed his *bill of revivor* against the defendant *John Blackett*, praying the proceedings may be revived, and the defendant admit assets, &c. To which bill the defendant appeared, and put in his answer, and admitted assets; and the cause was revived by order made the fourteenth of *June* last.

The deputy
makes his re-
port.

In pursuance of which orders the deputy remembrancer made his report, dated the twentieth of *April* instant; and upon reading the decree, order, and report, no exceptions having been taken thereto, or any counsel attending for the defendants,

IT IS ORDERED BY THE COURT, that the report be ratified and confirmed, and that the defendants do forthwith pay to the plaintiff the several sums reported due for the value of a moiety of the tithes of part of the lands in question (a).

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

DELAVALLE
against
BLACKETT
AND OTHERS.
The report confirmed.

(a) The Book of Decrees and Orders is silent respecting the costs awarded in this case; but it is said, that a question was made whether the defendant *John Blackett* should pay costs; and that this distinction was taken, that if the bill of revivor against him had been only for costs which had not been

ascertained in the life time of the testator, that then he should not have paid costs; that here the bill of revivor was for the duty as well as the costs; and that therefore the defendant, though an executor, should pay costs. S. C. Bumb. 45. See also *Dodson v. Oliver*, Bumb. 160.

WILLETT *against* DUPLECK and Others.

Suffex, 6th February 1717.

HILARY TERM
4. GEO. I.

THE plaintiff, as vicar of the parish of *Wadburst*, in the county of *Suffex*, claimed the tithes of hay, flax, hemp, hops, and all other vicarial tithes, from *Lady Day* 1714.

The vicar of *Wadburst*, in *Suffex*, is entitled to the small tithe of *Church Settle*, *Gregorys*, *Thayers*, *High Town*, *Mill Lands*, and *Foxholes*, in kind.

The defendant *Dupleck* admitted the plaintiff to be vicar; and that, ever since *Lady Day* 1714, he had held the several lands and farms called *Church Settle*, *Gregorys*, and *Thayers*; an orchard, a flower garden, a hop ground, and several other titheable matters; for all which he insisted that a *modus* of one pound, nineteen shillings, a-year was payable in lieu of tithes.

The defendant *Newington* put in the same answer, and set up a *modus* of three pounds, fourteen shillings, for his lands called *High Town* and *Mill Lands*.

The defendant *Watts* also answered to the same effect, and said, that he had used *Foxholes*; and insisted on a *modus* of one pound, ten shillings, for the same, also payable at *Lady Day*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the depositions taken in the cause; the register book of the parish of *Wadburst* in 1604; the tithe books for 1644, 1645, and 1658; and on hearing what could be alledged by counsel on both sides; and on full debate;

THE COURT declared, that there was no *modus* proved, as set forth in any of the defendants answers. Therefore

IT IS ORDERED BY THE COURT, that the defendants do severally satisfy and pay to the plaintiff tithes in kind of hay, hemp, flax,

WILKETT
against
DUPLECK
AND OTHERS.

flax, and hops, and all other vicarial titheable matters and things had and enjoyed by them within the said parish and the titheable places thereof during the time by the bill demanded, with costs. And it is referred to the deputy remembrancer to take the said account, and to tax the plaintiff his costs.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
J. FORTESCUE ALAND.

HILARY TERM.
4. GEO. I.

SHAW against BRUMPTON.

Lincolnshire, 18th February 1717.

The rector of *Wyberton*, in *Lincolnshire*, claimed the tithes of sheep and lambs fed on the common fen; and charged, that the defendant had fraudulently taken a lodging in an adjoining parish, in order to avoid payment of the said tithes.

THE bill stated, that the plaintiff had been, for several years past, rector of the parish and parish church of *Wyberton*, in the county of *Lincoln*, and was entitled to all manner of tithes arising therein, and in the titheable places thereof; that the inhabitants there have a right of common for all manner of cattle without number, at all times in the year, in a common fen adjoining to *Wyberton*, as the inhabitants of other parishes adjacent to the said fen have; that where an inhabitant of *Wyberton* keeps sheep upon the said common fen in the winter, and sells them after *Candlemas Day*, and before the *shearing day* following, there are due to the rector, by ancient custom used in the said parish, threepence for every sheep so sold, in lieu of the tithes of such sheep; that the defendant *Brumpton* was, and for divers years past had been, an inhabitant, and had held a farm there, and as such had a right of common in the said common fen; that about *Michaelmas* 1713 the plaintiff made an agreement with him to take eight pounds a-year for his tithes, and at *Michaelmas* 1715 gave him notice, that for the future he would take his tithes in kind; that about the same time, or about the *Candlemas* following, the defendant, in order to defraud the plaintiff of his tithes, took a lodging for himself only in an adjacent town, called *Skirbeck Quarter*, whose inhabitants have likewise a right of common in the said fen; that he continued to keep his house and farm at *Wyberton*, where his family and all his servants lived; that they looked after his stock there, and on the said fen; and that he was the reputed housekeeper there, and as such rated to all parish rates in *Wyberton*; that since *Michaelmas* 1715 he had sowed several acres of his said farm with wheat, barley, oats, peas, and other grain, which he had cut and carried away without setting out the tithes thereof, or making any satisfaction for the same; that he also had several sheep, from which he had wool and lambs, the tithes of all which ought to have been paid to the plaintiff, but which he, the defendant, had refused to do, on the pretence that he was not an inhabitant and housekeeper there, and that none but resident housekeepers ought to pay the tithes

of wool and lambs in kind to the plaintiff; but that persons who occupied lands in *Wyberton* who are not actually resident there ought to pay only tenpence an acre in lieu of the tithes thereof; the contrary of which is the truth; and that the other defendants combined partly in the same manner to defraud him of his tithes. The bill therefore prayed to be relieved in the premises.

SHAW
against
BRUMPTON.

The defendants appeared, and put in their answers nearly to the same purport as in the bill alledged.

The defendant
admits the facts.

The plaintiff replied; the defendants rejoined; and witnesses were examined; and on reading the proofs in the cause,

IT IS ORDERED BY THE COURT, that the defendants shall account generally with the plaintiff for the tithes of the titheable matters and things demanded by the bill, as well for the tithes of those titheable matters they respectively had and kept within the said parish as upon the said common fen; and it is referred to the deputy to take the said account.

The defendant
decreed to pay
3d. for every
sheep sold;

Pursuant to which order, the deputy made his report on the twenty-ninth of *May* last; and on reading the same without exceptions,

IT IS ORDERED, on the sixteenth of *June* 1718, that the said report be confirmed, and that the said defendants do pay to the plaintiff the several sums reported due to him for the tithes of the wool and lamb which they had in the said parish, and upon the common fen, and clipped in the said parish of *Wyberton*.

and the tithes of
wool and lamb
on the common
fen.

SMUTTLEWORTH against GOLD.

Wiltshire, 22d February 1717.

HILARY TERM
4. GEO. I.

THE bill stated, that about *Sept. mber* 1711, the plaintiff was lawfully presented and inducted rector of the parsonage or parish church of *Fisfield Brabant*, in the county of *Wilts*, and had ever since officiated as lawful rector there, and is entitled to all, and had received all manner of tithes arising within the said parish and the bounds and limits thereof; except of and from three inclosed pieces of ground and three acres of land not inclosed, but lying next to one of the said closes, all which do lie within the said parish, and are part of the estate called *Woodhouse*, which lies within the said parish, at the extremest parts thereof, next to the adjoining parish of *Bower Chalk*; that at the plaintiff's first coming to the said rectory, he knew not that the same belonged to the said parish; but that in the year 1712 he found the same did belong to it, and that the defendant *Gold* occupied the same, and was charged to the poors rates of the said parish, which rates he had all along paid, although he lived in the adjoining parish of *Bower Chalk*; and also, that he had

The three closes
and three acres
of land called
Woodhouse are
within the parish
of *Bower Chalk*,
in *Wiltshire*, and
not in the ad-
joining parish of
Fisfield Brabant,
although rated to
that parish.

SHUTTLE-
WORTH
against
GOLD.

paid all other parish rates for the said lands to the said parish of *Fifield Brabant*; that the said defendant had, during the same time, sowed part of the said lands with beans, pease, oats, and other sorts of corn and grain, and had mowed part of the same, the hay and corn of which he had inned without paying the tithes thereof, or making any satisfaction for the same; that the said defendant had acknowledged to the plaintiff that the tithes of the said lands, when fed and used as pasture, were constantly paid to the plaintiff's predecessors, the rectors of *Fifield*; and that the tithes of corn and grain growing thereon were taken by the lessees of the impropriate tithes of *Bower Chalk*; but why he could not tell; that he had also owned that the said lands were part of the *Woodhouse Estate*, and in the parish of *Fifield Brabant*; and that all rates and taxes thereof and upon the said estate were charged by and paid to the said parish; but that the said defendant combining with the other defendant *Penruddock*, who is lessee of the impropriate tithes of *Bower Chalk*, under the provost and scholars of *King's College*, in *Cambridge*, the impropriators and owners thereof; and also with the other defendant *Good*, who is lessee and occupier of the said tithes under the defendant *Penruddock*; they refused to pay the titheable matters aforesaid, or make any satisfaction for the same. The bill therefore prayed a full discovery and satisfaction for the said tithes.

The defendants *Gold* and *Good* said, that they believed the plaintiff was rector as aforesaid, and entitled to all tithes yearly arising in the parish of *Fifield Brabant*; and admitted, that there are three inclosed pieces of ground and three acres as aforesaid, and that the defendant *Gold* had rented and constantly paid for several years past the great tithes thereof, either to the defendant *Penruddock* as impropriator of *Bower Chalk*, or to the defendant *Good* as his tenant or lessee; and that the *privy tithes* thereof had, time out of mind, been paid to the rectors of *Fifield Brabant*; but they said, that none of the *great tithes* arising on the said closes and grounds were ever paid to any rector of *Fifield Brabant*. They admitted, that the same had been rated to the parish of *Fifield*, but cannot set forth in which of the said parishes the said three closes do lie; but they said, that the three acres of land do lie in the parish of *Bower Chalk*; and they set forth the facts as stated in the bill.

The defendant *Penruddock* admitted the plaintiff was rector, and entitled to all tithes there; but said, that he knew not whether the said land and grounds are in the parish of *Fifield Brabant*, or in the parish of *Bower Chalk*; that he, as impropriator of *Bower Chalk* under the said college, is entitled to, and hath received, for twenty years past, the great tithes of *Bower Chalk*, as well as the tithes of the said grounds and closes in dispute; and that those under whom he claims have received the same
upwards

upwards of fifty-five years ; and he insisted on his right there-
to as lessee under the said college.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and on the proof taken on all sides being read, and on full debate, it is directed by the Court, that his issue be tried, the plaintiff here to be plaintiff at law, viz.
“ Whether the three inclosed closes, and the three acres of land
“ not inclosed, part of the estate called *Woodhouse*, or any and
“ what part of them, is or are situate, lying, and being within
“ the parish of *Fisfield Brabant*, in the county of *Wilts*, or
“ within the limits and bounds thereof ? or, whether the said
“ three inclosed closes, and the said three acres of land, or any
“ and what part of them, is or are lying and being within the
“ parish of *Bower Chalk*, in the said county, or within the limits
“ and bounds thereof ? ”

The cause came on the seventeenth day of *November* last upon the equity reserved ; and on the return of the *posse* of the verdict given, and no counsel appearing for the plaintiff, it was then ordered, that the said bill should stand dismissed out of this court, with costs to be taxed at law and in equity ; but by an order made the twenty-eighth day of *November* last, it was ordered, that the cause should, upon the plaintiff's paying three pounds costs, stand in the paper to be reheard ; and now, on the ninth of *December* 1718, when the cause came on, the plaintiff's counsel prayed, that the former issue might be tried again ; and upon reading the orders, the *posse*, and the plaintiff's affidavit ; and on hearing counsel on both sides ; a new trial was granted, upon the plaintiff's paying the costs of the last trial, to be taxed.

The new trial was had accordingly on the former issue ; and now, on the twenty-seventh of *April* 1719, the cause coming on to be further heard upon the equity reserved, it appeared by the *posse* returned upon a verdict given upon the new trial, that it was found that the said three closes and three acres of land are lying and being within the parish of *Bower Chalk*, in the said county of *Wilts*, or the limits or bounds of the same parish.

IT IS ORDERED BY THE COURT, that the bill be, and is hereby absolutely dismissed this court, with costs to be taxed by the deputy remembrancer both at law and in equity.

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

HILARY TERM
4. GEO. I.

BATE *against* SPRAKLING.

Kent, 18th February 1717.

The vicar of
Chilham, in Kent,
demands the
tithes of agist-
ment, calves,
pigs, wax, hops,
hop poles, milk,
and wood.
S. C. Bunb. 20.

THE plaintiff, as vicar of the parish church of *Chilham*, in the county of *Kent*, for five years past, claimed all tithes of wood, hay, calves, &c. hops, and other roots, herbage, and agistment of cattle, and all other tithes, except tithes of corn and grain; and stated, that the defendant, in the year 1715, held and occupied therein several acres of arable, pasture, and wood lands, and lands planted with fruit and hops; and also kept and depastured divers oxen, bullocks, runts, steers, cows, heifers, young cattle, and horses employed to work in other parishes, and divers sheep and lambs, which he bought in and fold again, and removed before they were shorn, and divers other dry and unprofitable cattle, as well of his own as other persons, taken into agistment, the feeding and depasturing thereof were of great value; that in the said year he fed and depastured divers cows, mares, sheep, and sows, from which he had calves, colts, lambs, pigs, wool, and milk, the tithes whereof he neglected to pay; that the defendant as to tithe milk pretends, that he having hung up a hog pail, or some other vessel unfit for use, in his court yard, had put the tithe milk therein every morning and evening, whereas if any tithe milk was so set out it was not as the law requires, nor did he set out the full tenth part, nor is there any custom for such tithing; that he had also a large pigeon-house, from which he had several pigeons; and had also felled, cut down, and grubbed up several quantities of wood, which he converted into faggots, cord wood, and poles; and also had great quantities of hops, which he picked and carried away; and had several other titheable matters and things, which he took and carried away without setting out the tithes thereof, or making any satisfaction for the same. The bill therefore prayed a full discovery of quantities, qualities, and values, and an account and satisfaction for the same.

The defendant
admits the vi-
car's right to
the tithes of a-
gistment, calves,
pigs, and wax;
and says,

The defendant admitted the plaintiff to be vicar of the said parish, and entitled to receive the tithes of all the titheable matters, except corn and grain; and said, that he occupied a messuage and several lands and closes, which he distinguished by stating how much of arable, and how much of pasture, and what planted ground, and by setting forth what cattle he had agisted of other persons; and he averred, that he had paid or tendered the plaintiff the tithes; and that he had refused to accept of the same; and he set forth his other titheable matters and things. He also stated, that on *Michaelmas Day 1714* he had given notice to the plaintiff that he would pay his tithe milk in kind, and would milk his cows in his yard at seven of the clock in the morning and at five in the evening, and afterwards gave notice,

that he set out
every tenth pint
of milk in his
yard, but that
the tithing pail
was stolen;
and insist, that

the tithe milk ought not to be carried to the vicarage;

that

that he would milk at eight in the morning and four in the afternoon, which he accordingly did, and for the tithes thereof put the tenth pint of every meals milk into a new pail; which being stole he put up another, but knew not what became of the tithe milk; but he insisted, that if it was spilt, it was the plaintiff's own fault; and that if he had desired it, he would have set out every tenth meal; but that the plaintiff insisted, that the tithe milk should be brought to the church-porch or to the vicarage-house. The defendant further set forth what sheep he had kept, and what lambs he had bred; and said, that the plaintiff had one for his tithe; and also what sheep he sold before shorn, and what their keeping was worth; and that he tendered the plaintiff the tithes for the same, which he had refused to accept. He further said, that he had paid the plaintiff the tithe wool for his sheep which were shorn; that he had pigs which the plaintiff had the tithe of; and that he had several pigeons. He confessed, that he felled one acre and ten poles of wood, and no more; all which, he said, was burnt or spent in his house, or used in husbandry on his farm; and as no part was sold, he insisted that no tithe was due. He also said, that he used two acres and better of hop ground, and did not set out the tithes, for that he had always paid ten shillings an acre in lieu of tithe hops, which were never taken in kind; which sum the plaintiff had accepted; and that the plaintiff making unreasonable demands for his tithes, the defendant told him he would pay his tithes in kind; yet the plaintiff did not demand tithe hops in kind, and was contented to take the said rate, which he said he had tendered to the plaintiff; and the said defendant set forth his other tithes.

The plaintiff replied specially, and thereby said, that he was willing to accept of the several sums offered in the defendant's answer for agistment of cattle, the depasturing of sheep, and for the tithes of calves, pigs, and wax, as set forth, with his costs, and waived any other proceeding as to the other tithes, except, the tithes of hops, wood, and milk.

To which replication the defendant rejoined, and several witnesses were examined on both sides; and on reading the depositions of witnesses, and on full debate,

THE COURT declared, that the defendant ought to account with the plaintiff for the tithes of agistment of cattle and depasturing sheep, and of the calves, pigs, and wax, as offered in the defendant's answer, and accepted in the complainant's replication; and that the defendant ought also to account with the plaintiff for the tithes of his hops, milk, and wood (except such part of the said wood as was used for *hop poles* in the said parish, for which no tithes are to be paid); and the plaintiff being

G 4

willing

RATE
against
SPARKLING.

that the wood
he had felled
was burnt in his
house, and there-
fore not tithe-
able;

and that he had
always paid 10s.
an acre in lieu of
tithe hops in
kind.

The tithes of a-
gistment, calves,
pigs, and wax,
decreed;

and also the tithe
of hops, but not
of hop poles.

BATE
against
SPARKLING.

willing (to prevent further charges and expence) to accept the sum of eleven pounds, thirteen shillings, and tenpence half-penny, for the value of the said tithes, (the same being confessed by the answer to be of that value) together with his costs, and the defendant submitting and consenting thereto,

IT IS ORDERED BY THE COURT, that the defendant do forthwith pay to the plaintiff the aforesaid sum, together with his costs, to be taxed by the deputy of this Court, to whom it is hereby referred to tax the same.

THO. BURY.
RO. PRICE.
JAS. MONTAGUE.
J. FORTESCUE ALAND.

HILARY TERM
4. GEO. 1.

SMITH *against* ROWCLIFFE.

Somersetshire, 6th February 1717.

The vicar of
Hensbridge, in *Somersetshire*, claims
tithes in kind
for hay, cows,
calves, agist-
ment and apples.
§. C. Bunb. 20.

THE bill stated, that for several years past the plaintiff had been lawful vicar of the church and vicarage of *Hensbridge*, in the county of *Somerset*, and was entitled to all the small tithes and duties yearly growing, &c. therein, and in the titheable places thereof; that in the year 1715 the defendant occupied pasture ground, whereon he had kept several milch cows, which had produced calves and given milk, and had also kept sheep, which had brought forth lambs and borne wool; that he also had several grazing oxen and barren heifers, which he had fed and fattened on his said lands; that he also had occupied several orchards, and had apples and other fruits therefrom, the tithe of all which the plaintiff was entitled to, and also to several other titheable matters and things. The bill therefore prayed, that the defendant might account for and pay to the plaintiff all his tithes and duties, as demanded by the bill.

The defendant
says, that he
paid his tithes
to the year 1715.

The defendant admitted, that the plaintiff was vicar, and entitled to the tithes in the same manner as his predecessors had been entitled thereto. But he denied, that any tithes were payable in kind, except for sheep and wool; for that there were certain *modus*es payable in lieu thereof, which he had paid to the plaintiff for all tithes and duties due to him to the end of the year 1714. He confessed, that in the year 1714 he had occupied one hundred and forty-one acres of pasture ground in the said parish, fourteen acres whereof are called *Durrants*, and seventeen acres *the Two Higher Home Grounds*, for which tithes are payable; but that as to the residue, there was an immemorial custom, that every occupier thereof shall pay to the vicar thirteen shillings and fourpence, in lieu of all tithes for or in respect of the said ninety acres: And he insisted on the said custom in discharge

that there is a
modus of 13s. 4d.
a-year, in lieu
of the tithe hay
of ninety acres
of his farm,

discharge of all vicarial tithes for the said ninety acres. He also said, that in the year 1715 he had kept and depastured six or seven milch cows, and about six or seven calves; but insisted, that it had immemorially been the custom and usage to pay twopence at *Easter* yearly for each cow bringing a calf, for the feeding and depasturing such cows, and a halfpenny for every calf under seven; and if any of the said calves under seven were sold, the tenth penny to the vicar; and if seven calves have fallen, and have prospered, the vicar hath had the seventh calf between a month and five weeks old, paying the owner three halfpence; that of the six or seven calves which he had in the said year, he had sold only three, and weaned the rest for the pail, for which nothing is due to the vicar; that in the said year he had fed and taken to winter several sheep of another person's, which had several lambs, and that he had no wool or lambs of his own in that year. He said, that he had fattened and grazed in the said year twelve oxen, four of which were used in his plough; and that, by the custom of the parish, no tithe hath been paid for plough beasts fattened, or for barren beasts bred and fattened in the parish. He admitted, that in the said year he had occupied three orchards; and insisted, that by custom time immemorial the occupier of every orchard had paid to the vicar, at *Easter* yearly, twopence only, in lieu of tithe apples.

SMITH
against
ROWCLIFFE.
2d. a-year for a
cow 1½d. for a
calf, &c.

that nothing is
due for agist-
ment;

and only 2d. a-
year for apples.

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and on reading the proofs taken in the cause, and on mature and deliberate debate of the matter;

IT IS ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay to the plaintiff for all his tithes in kind, for the year 1715, only the tithes of wool and lambs excepted; and it is referred to his majesty's deputy remembrancer to take the said account.

Tithes, except
of wool and lamb,
decreed in kind.

THE COURT FULL.

GRIFFITH against HUGHES.

Gloucestershire, 26th June 1718.

TRIN. TERM,
4. GEO. I.

THE plaintiff, as rector of *Woolaston*, in the county of *Gloucester*, with the chapelry of *Alvington* annexed, stated, that he was duly instituted, &c. thereto, in the year 1711, and having duly performed the cure there, was lawfully entitled to all tithes, both great and small, yearly arising therein, and in the titheable places thereof.

The rector of
Woolaston, in
Gloucestershire,
with the chapel-
ry of *Alvington*,
annexed, is en-
titled to both
great and small
tithes of the pa-
rish.

The defendants denied, that the plaintiff was presented to the rectory, but admitted that he might be to the vicarage, and that he was entitled to the small tithes; but they insisted, that the great

CRIFFITH
against
HUGHES.

great tithes belonged to another person, and that they, as tenants to him had received the same.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and on reading the plaintiff's institution and induction into the said rectory and chapelry, and the proofs in the cause ;

IT IS ORDERED BY THE COURT, that the defendants shall account with, satisfy, and pay to the plaintiff all their tithes and titheable matters by each of them held, during the five years they had held their farm, and it is referred to the deputy to take the same.

TRIN. TERM,
4. GEO. 1.

ROGERS against SYNDRY.

Buckinghamshire, 8th July 1718.

The plaintiff
prescribes in a que-
stion, for the
tithes of the town
of Buckingham,
and particularly
for Lady's Mea-
dow, Bradbury's
Close, Sandy Hill,
and Conduit
Fields.

THE bill stated, that the plaintiff and all those whose estates he has, is and were lawfully seised in fee or of some other good estate of inheritance, or is or have been otherwise well entitled to the tithes of all corn, grain, and hay, arising, &c. upon all or any the lands, meadow, and pasture ground, lying and being in the town or borough of Buckingham, and in the titheable places thereof ; that the defendants, or some of them, as undertenants or lessees of the defendants Syndry and Gore, have, for several years past, held and occupied several lands, closes, pastures, and meadows lying therein, and have yearly sowed and carried away several sorts of corn, grain, hay, and grafs, and also fed cattle and sheep, and have agisted cattle ; for all which they ought to have paid tithes in kind, or made some recompence for the same to the plaintiff ; that some of them have occupied meadows and closes called Lady's Meadow, Bradbury's Close, Sandyhill Ground, otherwise Grey Field, Conduit Close, and a meadow belonging to it within the said town or borough, during which time they did either sow the same with corn, or made the grafs into hay, the tithe whereof belonged to the plaintiff ; that they did also feed the same with cattle, for which the plaintiff ought to have been paid two shillings a-year, according to the yearly value of the said lands, which they had refused to do, pretending that the same were let to them tithe free, by the said Syndry and Gore ; and that the tithes belonged to the plaintiff's grandfather, who had demised the same to the said two defendants. The bill therefore prayed a discovery of their tithes in kind, and of the persons under whom they claim, and that they may account for the same.

The defendants say the premises are tithe free, as having belonged to Barton's Chantry, and that after the dissolution thereof, the lands, by several mesne conveyances, veited in to themselves, whom they respectively married, and so became entitled thereto.

to the tithes of all corn, grain, and hay, as aforesaid demanded; and admitted, that the other defendants, as undertenants to them, held the said lands, as in the bill is mentioned, and believed, that they had yearly cut and carried away corn, grain, and hay therefrom, and that they may have fed and agisted several sheep and other cattle thereon, but that they knew not the quantities. They denied, that they, or their undertenants, ought to have paid tithes in kind, or made any satisfaction in lieu thereof, the premises being always let tithe free. They also denied, that they, or either of them, are, or is seised of, or entitled to the tithes of the said town or parish of *Buckingham*; for that the premises, which the plaintiff charges with the payment of tithes, were heretofore part of the lands of the late dissolved chantry, known by the name of *Barton's Chantry*, situate in the parish of *St. Peter*, in the town of *Buckingham*; that after the dissolution of the said chantry, the tithes of the said several pieces of ground, did, by several conveyances, become legally vested in *E. Richardson*, who, in the year 1637, being seised in fee of and in the tithes of corn, grain, and hay arising upon the said lands, did, by will, dated 1637, give to his wife *Mary*, and her heirs, the tithes of *Grey Field* meadow and closes, she or they paying towards a chief rent to the king six shillings a-year, which rent the said defendants have paid, and do now pay to *Sir E. Denton*, as lord of the manor of *Milsdon*, for or in respect of the said premises; that some time after the said *Mary* became seised of the same, she died, and her daughter, dame *Mary Baggot*, in right, became seised thereof, and by indenture, dated the fifteenth of *September* 1667, tripartite, she and her husband did convey the same to *S. Montague*, who became seised in fee, and by lease and release, dated the twenty-ninth and thirtieth of *September* 1680, did sell to *John Rogers*, the elder, all the said premises, to hold to him and his heirs for ever; that the said *John Rogers*, by will, bequeathed the same to *Anne* his wife for life, and then to his children, equally to be divided between them; that they, the said defendants, intermarried with two of the daughters, by virtue whereof they became seised of and in two parts; that the said *Anne* soon after died, when they became seised thereof in fee with the other devisees, and did jointly hold and enjoy the premises free of all manner of tithes whatsoever, and they hoped, that as the plaintiff had not set forth any title to the same, they should be relieved.

ROGERS
against
SYNDRY.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and on reading an indenture, dated the tenth of *February* 1676, made between *Lambert* and his wife, and *John Rogers*, junior, and another indenture, dated the twenty-eighth of *September* 1709, made between the plaintiff and *Adington*, and reading the proofs in the cause, and on full debate,

The evidence
read.

It

ROGERS
against
SYNDRY.

The bill dismissed.

IT IS ORDERED BY THE COURT, that the bill be dismissed out of this Court.

THO. BURY.
RO. PRICE.

TRIN. TERM,
4. GEO. I.

NAPIER against KING and Others.

Dorsetshire, 23d June 1718.

The rector of *Sutton Waldron*, in *Dorsetshire*, claims the tithes of a close called *Brookway*, of *Sutton Farm*, of *Seade's Tenement*, of *Poulden's Common*, and of *Still's Common*.

THE bill stated, that the plaintiff, for thirty years past, had been rector of the parish of *Sutton Waldron*, in the county of *Dorset*, and having duly officiated and performed the cure there, ought to have and receive all tithes, great and small, as well as all duties and offerings arising therein, and also all monies by any custom or *modus* payable; that the defendant *P. King*, from *Lady Day* 1708, had held two farms and other lands in the said parish, and particularly a close called *Brookway*, which he had stocked with divers cattle, and had reaped the benefit thereof, and had kept sheep and cows thereon, which had lambs, calves, wool, and milk, but had paid no tithes, or any thing in lieu thereof, either for dry cattle, or for agistment of cattle; that the plaintiff ought to have had all customary tithes and duties paid to him, or some *modus* or composition in lieu thereof, in the same manner as his predecessors, time beyond memory had enjoyed the same, but that the defendants had neglected to make him any satisfaction, under pretence that the said grounds are exempt from the payment of tithes, and especially from paying any thing for cattle breeding or agistment thereon.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to all the great and small tithes arising therein.

The defendant says, that he compounded with the plaintiff for *Sutton Farm*, for 27l. a-year.

that he paid the tithes of *Seade's Tenement* in kind; that the tithes of *Poulden's Common* and *Still's Common* were only 2s. 6d. a-year.

The defendant *P. King* said, that, for seven years past, he had occupied *Sutton Farm*, and the two small farms in the bill mentioned; that by indenture, dated the twenty-ninth of *September* 1708, in consideration of the yearly rent of twenty-seven pounds, to be paid by him to the plaintiff, the plaintiff had demised to him and his heirs all his tithes on the said three farms, (except the tithe of coppice wood), to hold for twelve years; and that the said deed was duly executed; that, at *Lady Day* 1709, he became tenant to the lord of the manor of *Sutton Waldron*, of a small tenement called *Seade's Tenement*, and had held it ever since; and that the plaintiff had, ever since *Lady Day* 1709, collected and received all tithes arising on the said farm in kind. The defendant further stated, that, for three years past, he had held two small commons, called *Poulden's* and *Still's*; that the common called *Poulden's* he held of the lord of the manor of *Sutton Waldron*, and the other of *John Still*; that he depastured on the same one yoke of oxen, and four barren beasts at a time, in the summer season, and about twenty hogs in the winter; and

and that the tithes thereof, if due, were only worth two shillings and sixpence a-year. He further stated, that, for one year, he had occupied a piece of ground called *Brookway*, which is preserved as a way for each tenant to his proportion of the Common; and that he holds the same under all the copyholders, and had depastured thereon sixty hog sheep, for a week, in the spring of the year, and at other times other cattle, according to the feed thereon; that the said cattle and sheep were also depastured on other grounds, and therefore ought not to be double tithed; that at the time the said common was enclosed by the copyhold tenants, the then rector, with the consent of the lord and tenants, did inclose about half an acre next adjoining to *Brookway*, with part of the river, for the rector's conveniency of watering the cattle which depastured on his glebe lands; and that the rector enjoyed the same in satisfaction of the yearly tithes of *Brookway*, for which no tithes were ever demanded or paid. He admitted that all tithes were payable in kind; save only a *modus* of twopence for each cow, called *cow white money*, which he insisted, by ancient custom had been paid, and ought to be received in full for tithe milk.

NAPIER
against
KING
AND OTHERS.

that the plaintiff enjoyed an inclosure called the *Drove*, in lieu of the tithes of *Brookway*;

and that there is a *modus* of 2d. a cow, in lieu of tithe milk.

The other defendants put in much the same answer as to *Brookway*.

The defendant *J. King* denied, that he had ever occupied *Brookway*, and said, that he had paid the plaintiff all his tithes in kind.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides, and on reading several of the depositions taken on both sides, and on full debate, the Court directed a trial at law against *P. King*, *William James*, and *R. Poulden*, to determine, "Whether the piece of ground called the *Drove* be enjoyed by the plaintiff, in lieu and satisfaction of the tithes arising upon a certain piece of ground called *Brookway*?"

An issue directed to try, whether the *Drove* was enjoyed by the plaintiff in lieu of the tithes of *Brookway*.

AND IT IS FURTHER ORDERED, that the defendant *P. King*, as to all matters in the bill charged (except as to the two commons called *Still's Common*, *Poulden's Common*, and the said *Brookway*), be, and the same is hereby dismissed, with costs, to be taxed; and also that the defendants *William James* and *Richard Poulden*, be dismissed with their taxed costs, of and from all the matters in the bill contained, except as to the piece of ground called *Brookway*; and also that the defendant *J. King* be dismissed of and from the said bill, with his costs to be taxed by the said deputy remembrancer.

AND IT IS FURTHER ORDERED, that after such trial shall be had, that the defendant *P. King* shall account with the plaintiff for his tithes arising upon the two commons aforesaid; the

Tithes for the commons decreed.

NAPIER
against
KING

the consideration of costs, as to the two commons and *Brookway*, to be reserved till after such trial had.

AND OTHERS.

Costs reserved
till after trial.

A verdict for the
plaintiff.

A trial at law on such issue was accordingly had, and the plaintiff obtained a verdict; and upon reading the *poslea*, it appeared, that the jury found, that the piece of ground called *the Drove* was not enjoyed by the plaintiff in lieu and satisfaction of tithes arising on the said piece of ground called *Brookway*.

The tithes of
Brookway de-
creed.

Now, on the eleventh of *June* 1719, upon hearing counsel on both sides, it was ordered, that it be referred to the deputy to take an account of what is due for the tithes of the said ground called *Brookway*, from the time the defendant had held the same; and also an account of the said two commons, as directed by the former decree; and it is further ordered, that the said defendants do pay to the said plaintiff his costs, to be taxed both at law and in equity, in relation of the said *Brookway*, and the said two commons in the former order mentioned.

Defendants to
pay costs.

The report of
tithes due con-
firmed.

In pursuance of the said order, the deputy made his report; and upon reading the former decrees and report, dated the seventh instant, without exceptions, it is ordered, on the tenth of *December* 1719, that the same be ratified and confirmed, and that the said defendants do forthwith pay to the said plaintiff three pounds, so reported due, with his subsequent costs to be taxed.

MICH. TERM,
5. GEO. 1.

HANKIN against GAY.

Lincolnsbire, 4th *December* 1718.

The representa-
tives of the les-
sees of the im-
propriate rectory
of *Holbeach*, in
Lincolnsbire, claim
arrears of tithes.
S. C. Bunb. 37.

See Pearson v.
Hoskerton, vol.
i. page 380.

THE plaintiffs *Hankin* and *Sly*, administrators of *Susannah Peirson*, and administrators, with the will annexed, of the goods and chattels of *R. Peirson*, not administered by the said *Susannah*, executrix of the said *R. Peirson*, with *R. Peirson*, the infant, filed their bill, in the thirteenth year of *Queen Anne*, against all the defendants, except *S. Adenbrooke*, setting forth, that the rectory of *Holbeach*, in the county of *Lincoln*, with the glebe lands, tithes, and appurtenances, to the same belonging, are, and for time out of mind have been lawfully annexed to the bishoprick of *Lincoln*; and that the plaintiffs are entitled to receive the said tithes, as lessees of the said rectory under the bishop of *Lincoln*; that the defendants, being owners and occupiers of lands within the said rectory, are indebted to the plaintiffs for the arrears of many years tithes, and have refused to pay, or to make any satisfaction for the same. The bill therefore prayed, that the defendants might answer the premises, and make a satisfaction to the plaintiffs for their said tithes.

The

The defendants, by their answers, insisted, that the lands, by them respectively claimed, occupied, and enjoyed in the said parish, and set forth in their answer, were exempted from the payment of tithes, and from any *modus* or other satisfaction in lieu thereof (*a*).

The defendant *J. Wheeler* said, that he made no claim to any of the said tithes, nor ever made any, save for the use of *R. Pierſon*, in his lifetime, and the said *Suſannah*, ſince *R. Pierſon's* death.

The defendant *G. Arnett* ſaid, that he is vicar of the ſaid pariſh of *Holbeach*, and that the tithes of wheat, barley, peaſe, beans, rye, meſlin, oats, hay, wool, lambs, and flax in the ſaid pariſh belong to the biſhop's leſſees; but he inſiſted, that all other tithes belonged to him as vicar, and that he had always received the ſame, excepting when a claim of being exempted therefrom had been made by the occupiers of lands now in the poſſeſſion of the other defendants; and he inſiſted, that the tithe of coleſeed belonged to him as vicar.

The plaintiff replied; the defendants rejoined; and witneſſes were examined on both ſides; but before publication paſſed, the plaintiffs filed a ſupplemental bill againſt all the defendants, and added *S. Adenbrooke*, as a defendant thereto, for diſcovery and relief touching the ſeveral matters therein complained of.

To which bill the defendants put in their ſeveral answers; the plaintiffs replied; the defendants rejoined; and divers witneſſes were examined in this cauſe, but before publication paſſed, the plaintiff *Sly* died, whereby the ſaid ſuit abated, and his intereſt was committed to *A. Riſ*, who filed his bill of revivor againſt the ſaid defendants, to which they appeared, and the cauſe was revived by an order the tenth of *July* in the third year of the king, and publication duly paſſed.

The cauſe was appointed to come on in the *Michaelmas Term* following; but by an order made twenty-third of *November*, in the fourth year of *George the Firſt*, with the conſent of all parties, it was ordered to come on in *Hilary Term* following, and the defendants to appear *gratis*.

But before it came on the plaintiff *Riſ* died, whereby the cauſe again became abated; but adminiſtration being committed

(*a*) The defendants inſiſted, that the lands were formerly belonging to the abbot of *Crowland*, one of the greater abbeyes, diſſolved by 31. Hen. 8. and were therefore exempted from the payment of tithes, eſpecially when coupled with evidence that no tithes had ever been paid for them; but they did not aver that the lands were diſcharged of tithes when they were parcel of the poſſeſſions of the ſaid abbey,

which was not one of thoſe orders which were diſcharged, and the proof not being full as to the non payment of tithes, THE COURT unanimouſly decreed for the plaintiff, for although the defendants ſaid the lands were in the abbot of *Crowland's* hands, they do not ſay they were diſcharged of the payment of tithes in his hands, and the ſtatute 31. Hen. 8. c. 13. only extends to ſuch lands. S. C. Bunb. 37, 38.

HANKIN
againſt
GAY.

The defendants ſay, their lands are tithe free.

The defendant *Wheeler* diſclaims any intereſt except for the late rector.

The defendant *G. Arnett* claims the ſmall tithes as vicar.

The plaintiff files a ſupplemental bill, and makes *S. Adenbrooke* a defendant.

The plaintiff *Sly* dies, and the ſuit is revived by *Riſ*, his repreſentative.

The hearing appointed;

but *Riſ* dies, and the ſuit is revived by *D. Sly*, his adminiſtratrix.

HAWKIN
against
GAY.

to *Dorothy Sly*, spinster, she, thereby becoming entitled to the benefit and relief, filed her *bill of revivor*, setting forth all the matters aforesaid; to which bill the defendants appeared; and the suit was again revived by order, dated the ninth of *July* last, and the defendants were, by consent, to appear *gratis* at the hearing.

The cause heard.

The cause came on to be heard this day, the fourth of *December* 1718, and on reading the aforesaid orders, and the several answers, and no counsel attending for any of the defendants, except *G. Arnett* and *J. Wheeler*,

The defendants who had admitted themselves occupiers decreed to pay the great tithes to the plaintiffs.

IT IS ORDERED BY THE COURT, that all such of the defendants as are, or have been (for the several times admitted by their several answers) occupiers of lands within the parish of *Holbeach*, do severally account with the plaintiffs for the value of the several tithes and titheable matters due from them respectively, for so many of the several years in the bill charged, as they, by their answers, admit they were occupiers of the lands out of which such tithes arose, other then and except such of the tithes as are claimed by the vicar in his answer, and which the plaintiffs do submit should be paid to him; the said rectorial tithes to be paid to the plaintiffs, according to the interests claimed by them: and it is referred to the deputy remembrancer to take the account, unless they shew cause to the contrary; they first paying five pounds costs before they be heard.

The defendant *Wheeler* dismissed.

And it is further ordered by the Court, that the defendant *J. Wheeler* shall be, and he is hereby dismissed from the said bill and all the matters therein contained, with forty shillings costs.

The bill retained as against *G. Arnett*, the vicar.

But as to the defendant *G. Arnett*, the vicar, the bill is to be retained to the further hearing.

The cause heard.
The evidence read.

The cause came on the nineteenth of *February* 1718, pursuant to the above order (in which is set forth the pleadings fully and very long), and upon reading several receipts, and a copy of a lease from *Henry the Eighth* to *Dr. Topps*, of lands in *Holbeach*, dated the second of *March*, in the thirty-first year of his reign, and a copy of the king's farmer's accounts for a salt marsh in *Holbeach*, from *Michaelmas*, in the thirty-first year of *Henry the Eighth*, for one year; also a grant of *Queen Elizabeth*, of lands in *Holbeach* to *J. Deddington* and *J. Jackson*, and their heirs, dated the eighth of *April*, in the second year of her reign; also a deed, the twenty-second of *December* 1649, being the deed of purchase of the premises in question, by *G. Farmer*, from *Edward Lord Gorges* and *Richard* his son, and reading several depositions of witnesses examined on the part of the defendants, the cause was adjourned to this day, the twentieth of *February* 1718, when on reading several other deeds and leases, and several depositions taken in the cause,

ALL

ALL THE BARONS declared, that all the lands are liable to and ought to pay tithes, AND THEREFORE ORDERED, that all such of the defendants as are, or have been, for the several years by them respectively admitted by their several answers, occupiers of any lands within the parish of *Holbeach*, do severally account with the plaintiff for the value of the several tithes and titheable matters due from them respectively, from *September* the twelfth 1712, at which time it appears, by the proofs in the cause, that the said *Richard Lord Gorges* died, and during whose life, the defendants, except the defendants *Arnett* and *Wheeler*, were entitled to the tithes of the lands purchased by the said *G. Farmer*, of the said *Gorges*, by virtue of the said lease thereof, for so many years, in the bill charged, as they by their answers admit they respectively were, from time to time, occupiers of the lands out of which such tithes arose, except for such of the said tithes as are claimed by the defendant *Arnett*, the vicar, in and by his answer, which the plaintiffs do submit to be paid to him, but the rectorial tithes are to be paid to the plaintiffs, from the death of *Richard Lord Gorges*, according to the respective interests therein claimed by them, in and by their bill, and the said defendants are to pay the said plaintiff his costs: and it is referred to the deputy remembrancer to take the account, and to tax the costs; and it is further ordered, that the defendants *Arnett* and *Wheeler* shall be, and are hereby dismissed, with forty shillings costs to each of them.

HANKIN
against
GAY.

The lands decreed to be titheable.

The small tithes to be paid to *G. Arnett* the vicar.

Arnett and *Wheeler* dismissed.

In pursuance of the said decree, the deputy made his report, dated the twenty-third of *June* last; and upon reading the decree and report, it is ordered by the Court, on the sixth of *July* 1721, that the said report be ratified and confirmed, and that the said several defendants do forthwith pay to the plaintiff the several sums reported due for their tithes (a).

The report made and confirmed.

(a) See *Peirson v. Hosketon*, vol. 1. page 380. *Hankin v. Fotheringham*, post. 6 July 1721 Trinity Term 7. Geo. 3. *Hankin v. Howell*, *ibid.* See also

Mich. Term 9. Geo. 3. and *Hilary Term*, 11. Geo. 3. for other causes respecting this parish.

JONES against CAWTHORNE; et à Contra.

Cambridgeshire, 15th December 1718.

MICH. TERM,
5. GEO. 1.

THE bill stated, that in *January* 1714, the plaintiff was legally instituted and inducted into the parish church and rectory of *Downham*, in the *Isle of Ely*, and county of *Cambridge*; that he had ever since duly served the cure, and that by virtue of his said induction, he was legally entitled to all the great and small tithes arising therein, and in the titheable places thereof; to the *Easter* offerings, and other dues belonging to the said rectory; and to

The rector of *Downham*, in *Cambridgeshire*, claims the great and small tithes of the parish; a cattle gate for six cows in *Downham Park*; and *Fodder Fenn*.

the tithes of the extra-parochial places in *Bedford Level*, particularly of

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H

the

JONES
against
CAWTHORNE;
et c. Contra.

That, by custom, he is entitled to the tithes of rabbits and turkies.

the gate of six cows on certain lands called *Downham Park*, over all the said lands, at all times of the year; that by the custom of the parish the tithes of rabbits and turkies are due to the rector there; that all the defendants (except the *Bishop of Ely* and *Sir J. Shaw*), from *Lady Day* 1716, had occupied divers lands, meadows, fresh marshes, fen grounds, and orchards, particularly within the level, called *Bedford Level*, which is within the titheable places of the parish, and for which they ought to have paid tithes in kind to the plaintiff; that the defendants had on the said grounds wheat, barley, and rye, for which they ought to have paid tithes in kind; that they had kept on the said fen grounds milch cows which had calves, and also several sheep, from which they had wool and lambs; that they had several colts, which had been foaled from mares kept by them; that they also had pigs, swine, honey, poultry, and fruit, and had agisted cattle on the said grounds, and also had pigeons and other titheable matters in the said parish, of all which they ought to have paid tithes to the plaintiff, but which they had refused under several pretences to do. The bill therefore prayed a discovery of the several titheable matters and things, and an account and satisfaction for the same.

The occupiers say, that there are several mo-
duses in *Bedford Level*.

The defendant *Cawthorne*, and the other occupiers said, that the plaintiff was rector of the parish and entitled to all tithes arising therein, and to *Easter* offerings; that they were severally occupiers of divers lands lying therein, part whereof did lie in *Bedford Level*; that time out of mind there had been and then was several rates and customs for paying tithes in the said parish at *Easter*, viz. for every new milch cow, twopence; for an old milch cow, three halfpence; for every calf, sixpence; for a foal not sold within the year, one penny; if sold within the year, the tenth penny for which the same was sold; for *Easter* offerings for every married man and his wife, twopence a-piece; for every single person above sixteen years old, twopence; for hearths and gardens, one penny; for every pig, one shilling and sixpence; for tithe milk, the morning's milk of every *Monday*, to be brought home by the parishioners on *Whitsunday* (a), the rector adorning the church with boughs, and strewing the church with flags or rushes; that of the ground they occupied in *Fodder Fenn*, no tithe was due for the grass or hay thereof; for that the said *Fodder Fenn* was and is part of the ancient demesnes of the said manor of *Downham*, whereof the *Bishop of Ely*, for the time being, and his predecessors, have been and were seised in fee in right of the bishoprick, and which fen had always been free from the payment of tithes; and that they, as tenants to the said bishop, had not paid any tithes arising there; that for several years past, for preventing all differences about their

That no tithes are due for the hay arising in *Fodder Fenn*, the same being part of the demesne lands of the bishop of *Ely*.

(a) See post *Jones v. Cawthorne*, 15 July, 1720, Trinity 6. Geo. 1.

tithes of grafs and hay, they, and feveral landholders in the faid parifh, had paid twopence an acre for all their hay and grafs ground in the faid parifh, in lieu of the tithes of grafs and hay arifing from thofe parts which were not tithe free; and they infifted upon the faid rates and customary payments, and to be difcharged from the payment of any tithes for the grafs and hay of *Fodder Fenn*; all which *modus*es they fubmitted to pay, and denied, that tithes in kind were payable for the titheable matters comprised under the faid *modus*es; and they alfo denied, that they did pretend, or had ever pretended, that the lands held by them were extra-parochial.

The defendant *Thompson* faid, that before the plaintiff's induction, and ever fince he had been leffee of the *Bifhop of Ely*, of feveral acres of pafture and of fen land in *Downham*, called the *Fritbs*, which until the year 1650, was an ancient park, called *Downham Park*, and, until that year, impailed and replenifhed with deer, and that it had, time out of mind, been parcel of the demefnes of the manor of *Downham*; and he denied, that the plaintiff was entitled to any great or fmall tithes, but only to the gate of fix cows on the faid premifes, in lieu of all tithes arifing therefrom; and faid, that the reftors of *Downham* had constantly enjoyed the faid gate in lieu of tithes, until 1650, when the premifes were difparked; that, until that time, the *Bifhops of Ely*, and their leffees and tenants thereof, had, time out of mind, ufed to be difcharged from all manner of tithes arifing from the faid premifes, and that the faid fix cow gates in the faid premifes were enjoyed by the reftors of *Downham*, in full and complete fatisfaction of the tithes thereof; that foon after the difparking of the lands, the *Bifhop of Ely*, for the time being, or his leffee of the faid premifes, came to an agreement with the reftor of *Downham*, to pay him ten pounds a-year, in lieu of the faid fix cow gates; and that he is willing to pay the fame; and had tendered the fame, to the faid plaintiff: and he fet forth an account of his titheable matters and things demanded by the bill, and the values thereof.

The defendant *M. Carter* faid, that he was not an inhabitant of the faid parifh, and admitted, that, for fixteen years paf, he had occupied feveral acres of fen ground lying in *Bedford Level*; but he denied, that any part thereof lies within the bounds of the faid parifh; and averred, that they had been, time out of mind, efteemed *extra-parochial*, and that the tithes of fuch lands do belong to THE CROWN and its patentees; that fince he occupied the faid lands, he had either paid tithes in kind, or fome *modus* in lieu thereof, to fuch perfon as had a title thereto by fuch letters patent; that, for three years paf, he had paid the defendant *Sir J. Shaw* a yearly *modus* of twopence an acre, in lieu of the tithes of thofe lands, which came to four pounds *per annum*, and believed, that *Sir J. Shaw*, as patentee under THE CROWN,

JONES
againft
CAWTHORNE;
et à Contra.

That there is a
modus of 2d. an
acre in lieu of
tithe hay for the
lands not tithe
free.

The owner of the
lands called the
Fritbs fays, they
are only liable to
the cattle gate
for fix cows, the
fame having been
parcel of *Down-
ham Park*.

The occupier of
the lands in *Bed-
ford Level* fays,
the tithes thereof
are due and have
been paid to the
patentee of the
crown at the rate
of 2d. an acre.

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against
CAWTHORNE;
et c. Contra.

had a right to receive the same: and he set forth an account of what titheable matters he had.

The patentee of the crown says, that he is seised of 2064 acres in *Byall Fenn*, in *Bedford Level*, and insists, that he is entitled to the tithes thereof.

The defendant *Shaw* set forth, that *Queen Anne*, being seised in fee of the tithes of two thousand and sixty-four acres of land, lying in *Byall Fenn*, in *Bedford Level*, did, by her letters patents, dated the ninth of *March*, in the eleventh year of her reign, grant the tithes of those lands to him for thirty-one years; and he insisted, that all the lands are *extra-parochial*, and no part of them within the titheable places of the parish of *Downham*; and that he is entitled to the tithes thereof, as lessee of the crown.

The Bishop of *Ely* answers as ordinary.

The *Bishop of Ely* said, that he is seised in right of his bishoprick of the manor of *Downham*, of the demesnes of which *Downham Park* is parcel, and submitted his interests to the judgment of the Court, and said, that upon search made among the ancient writings belonging to the bishoprick several rolls were found relating to the demesnes of the manor of *Downham*.

The defendants answer, and the plaintiff by a special replication waives the demand of certain articles, and admits others.

To the answers of the defendants *Cawthorne* and the other occupiers, the plaintiff replied specially, and therein waived the demands of his bill as against them, for the tithes of their corn, grain, geese, eggs, hemp, flax, coleseed, honey, turnips, saffron, and orchards; and admitted their said customary payments for offerings, and one penny for hearths and gardens, as in the answer is stated, which he offered to accept from them with his costs; but he therein averred, justified, and maintained his said bill, as to all other the demands therein contained: as to the answers of the other defendants he replied generally, and the defendants rejoined.

The occupiers file a cross bill, and insist that *Fodder Fenn* is tithe free.

The defendants, who were the occupiers, for themselves and all the inhabitants of *Downham*, filed their cross bill against the plaintiff *Jones*, to establish the several *modus*es set forth in their answers, and to perpetuate the testimony of their witnesses, and insisted that *Fodder Fenn* was tithe free.

The rector insists on his right to the tithes of *Fodder Fenn*.

Jones answered and admitted the customary payments for *Easter* offerings, and for hearths and gardens; but insisted upon his right to tithes in kind for *Fodder Fenn*, and upon his right, as rector of the parish, to tithes in kind, as to all other matters, in manner as aforesaid.

Issue is joined.

The plaintiffs in the cross bill joined issue, and divers witnesses were examined in the original cause on both sides.

The cause comes on and the evidence is read.

The cause came on to be heard on the twenty-third day of *November* last, and upon reading the proofs in the cause, and a terrier of the glebe lands and other things belonging to the rectory of *Downham*, in the year 1638, with a schedule annexed,

It

It was ordered by the Court, that the depositions of *John Adams*, taken upon his second examination on the plaintiff *Jones's* side, to the first and thirty-eighth interrogatory, against *Cawthorne* and others; and likewise, that the deposition of *Benjamin Cawthorne*, taken upon the first, second, third, fourth, and fifth interrogatories, against the plaintiff *Jones*, should stand suppressed; and that the *modus* of twopence for a new milch cow, and three halfpence for an old milch cow, and the *Whisuntide* milk, insisted on by the defendants to be in lieu of tithe milk, should be set aside and discharged as void; and that the defendants should account for the value of the tithe milk; and as to the *modus*, insisted by the defendants, in their answers, for pigs, the defendants waived the same.

JONES
against
CAWTHORNE &
et al. Contra.

The *modus* as to
cows and milk
declared void.

The *modus* as to
pigs is waived.

Upon further hearing this fifteenth day of *December 1718*, as to the *modus* insisted on by the defendants in their answers for calves, the defendants waived the same.

The *modus* as to
calves waived.

And upon further reading of the proofs, and the defendant's answers, and a composition of a former *Bishop of Ely*, made the ninth of *March 1421*; and an adjudication, made the fourteenth of *August 1666*, by commissioners constituted by act of parliament; and an institution to the rectory of *Downham*, in the year 1273, in book M.; and accounts of the *Sacrista Eliensis*, in nineteenth year of *Edward the Third*, and the seventh and eighth of *Henry the Fourth*, in a bundle marked O. O.; and a receipt marked E.; and two tithe books of *Mr. Clopton*, a former rector of the said parish, marked K. and C.; and several bailiff's accounts of *Downham*, given into the former bishops of *Ely*, in the second, third, seventh, eighth, and ninth year of *Henry the Sixth*; and the eighteenth, twentieth, twenty-first year of *Edward the Third*, in a bundle marked N. N.; by which ancient evidences, it appeared that tithes in kind, or money in lieu thereof, had been anciently paid for the titheable matters and things kept in the said park; and upon reading a presentment of the jury of the manor of *Downham*, made the fourth of *May*, in the seventh year of *Queen Elizabeth*; and upon full debate of the matter;

A further hear-
ing and reading
of evidence.

THE COURT declared, that the plaintiff *Jones* is entitled to the tithes in kind of the things titheable arising and kept in *Fodder Fenn, the Park*, and the *Frith*.

The tithes of
Fodder Fenn,
Downham Park,
and the *Frith* de-
creed.

And as to the *modus* for foals insisted on by the defendants in their answer, the Court directed this issue to be tried, "Whether there was such a *modus* extending to the whole parish," but the plaintiff, being present in Court, waived the trial and submitted to accept of the *modus*.

The rector ac-
cepts the *modus*
as to foals.

As to the lands in *Byall Fenn*, in the possession of the defendant *M. Carter*, the tithes whereof are claimed by the other de-

An issue direct-
to try, whether
Byall Fenn is
Downham.

titheable to the parish of
defendants

JONES
against
CAWTHORNE;
et c. Contra.

defendant *Shaw*, by virtue of the lease from THE CROWN, as being extra-parochial, the Court ordered this issue to be tried, the plaintiff *Jones* to be plaintiff at law, "Whether the four hundred " and eighty acres in *Byall Fenn*, in the possession of the defendant *M. Carter*, or any and what part thereof be in the " parish of *Downham*, or not ? "

AND IT IS FURTHER ORDERED BY THE COURT, that the defendant *Thompson* shall account with the plaintiff for the value of his tithes in kind, of the titheable matters and things which he had and kept in *the Park*, *the Frith*, and *elsewhere* in the said parish, for the time demanded by the bill; but that for the tithes of his foals, gardens, hearth penny, and *Easter* offerings, he is to account according to the said customary payments.

The tithes of
Easter offerings,
firewood, fruits,
and foals de-
creed.

AND IT IS FURTHER ORDERED, that the defendants *Carw- thorne* and others shall account with the plaintiff *Jones* for their *Easter* offerings, and customary payments for their hearths, gardens, and foals, in manner as they have set forth in their answer, and for the values of the tithes in kind of all other titheable matters and things they respectively had and kept in the said parish and titheable places thereof, for the time demanded by the bill, other then and except for the values of the tithes of such titheable matters and things as the plaintiff *Jones*, in and by his special replication, hath waived ; and it is referred to the deputy remembrancer to take the account.

The bill as to
the bishop dis-
missed.
The cross bill
dismissed.

AND IT IS FURTHER ORDERED, that the plaintiff *Jones's* bill, as to the defendant the *Bishop of Ely*, be dismissed ; and that the defendant's cross bill be likewise dismissed this Court, but without prejudice as to the *modus* of foals.

The report con-
firmed.

In pursuance of the said order, the deputy made his report the fourteenth of *May* last of what was due from the defendants *Carwthorne* and others, for their tithes, and upon reading the said decree and report without exceptions,

It is ordered by the Court, on the first of *June* 1719, that the said report be confirmed, and that the defendants do respectively pay to the plaintiff the several sums reported due to him, for the values of the tithes of the several titheable matters and things which they respectively had and kept in the said parish.

The issue, as to
Byall Fenn, taken
pro confesso.

In pursuance of the said decree, a trial was had upon the issue directed against the defendants *Carter* and *Shaw*, and by a subsequent order, made the twentieth of *May* last, the plaintiff *Jones* neglecting to try the same, IT WAS ORDERED, that the said issue should be taken *pro confesso*, if he did not try the same ; and the said plaintiff still neglecting to try the same, the said cause now, on the twentieth of *February* 1720, came on for further directions at the request of the defendants, and the plaintiff being

being duly served with *subpœna* to hear judgment, and no counsel appearing for him,

IT IS ORDERED BY THE COURT, that the original bill and all matters and things therein contained, against the said defendants *Shaw* and *Carter*, be absolutely dismissed with costs, to be taxed by the deputy remembrancer of this Court.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

JONES
against
CAWTHORNE;
et d. *Contra*.

The bill as to the
tithes of *Byall
Fenn* dismissed.

GEALE against WINTER.

Somersetshire, 20th November 1718.

MICH. TERM,
5 GEO. 1.

THE plaintiff filed his bill against the defendants, and in particular against the defendant *Winter*, as under tenant to the defendant *Healy*, who held the impropriate rectory of *Bishop's Lidiard*, in the county of *Somerset*, by lease from the defendants the *Dean and Chapter of Wells*, setting forth, that the plaintiff, as vicar of the vicarage and parish church, was entitled to all tithe hay, to all sorts of grafs or seeds; and to all small tithes yearly arising within the said parish.

The vicar of
Bishop's Lidiard,
in *Somersetshire*,
is entitled to the
tithes of hay made
from natural or
artificial grasses,
arising not only
in the seven mea-
dows, but in the
rest of the parish.
S. C. Bunb. 40.

The defendant *Winter* said, that he had several small tithes that were due to the plaintiff, which he had offered to pay him; but he denied, that the plaintiff, as vicar of the said parish, was entitled to the tithes of hay arising from all sorts of grafs or seeds therein, except the tithe of hay yearly arising out of the seven meadows mentioned in the defendant's answer.

The other defendants put in their answers, and submitted themselves to such judgment as the Court should make upon the determination of the cause.

The plaintiff replied to the answers of the defendants *Winter* and *Healy*, and the defendants rejoined, and witnesses were examined; and upon reading the several depositions, and a survey taken in the month of *May* 1650, touching the manor and rectory of *Bishop's Lidiard*, and on debate of the matter, the Court directed an issue to try "Whether any and what tithes of hay yearly arising within the said parish of *Bishop's Lidiard*, do belong to the plaintiff as vicar, over and above the tithe hay arising from the seven meadows mentioned in the defendant *Winter's* answer, viz. *Rattle Meadow, Broad Mead, Common Mead, Small Mead, Saunder's Mead*, and *Thomas Farden's Meadow*, or any, and what sum or sums of money in lieu of such tithe hay?"

A trial was accordingly had, and a verdict found for the plaintiff; but, on the twenty-third of *April* 1719, the defendants

GEALE
against
WINTER.

moved for a new trial, and THE LORD CHIEF BARON reported the evidence of the trial, whereby it appeared, that the jury found that the tithes of hay yearly arising within the parish of *Bishop's Lidiard*, or a reasonable sum of money for a composition in lieu thereof, over and above the tithes of hay arising out of the said *seven meadows*, did and do of right belong to the plaintiff, as vicar of the said vicarage and parish church of *Bishop's Lidiard*.

THE COURT, after refusing the new trial, declared, that all tithe hay within the parish, or some *modus*, composition, or other satisfaction in lieu of such tithe hay, do of right belong to the plaintiff, as vicar of the said vicarage and parish church of *Bishop's Lidiard*; AND THEREUPON ORDERED, that the defendant *Winter* do account before the deputy remembrancer for the tithes of hay, according to the verdict, for the time mentioned in the bill; and for all the other tithes demanded by the bill, which he, as lessee of the impropriate rectory of *Bishop's Lidiard*, had received from the rest of the inhabitants of the said parish.

In pursuance of the said decree the deputy made his report, dated the twenty-second of *March* last: But before any further proceedings the defendant *Winter* died, and the said proceedings being properly revived, the cause came on for further directions upon the report, and upon reading the same, and no exceptions taken thereto, and no counsel attending for the defendant;

IT IS ORDERED BY THE COURT, that the report be ratified and confirmed, and that the said defendant do forthwith pay to the plaintiff the eighty-one pounds, four shillings, and one penny, reported due for his said tithes, together with his costs, to be taxed by the deputy remembrancer of this court.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

MICH. TERM,
5. GEO. 3.

RALPH against SANDFORD.

Essex, 9th December 1718.

The plaintiff being appointed rector of *Ingatestone*, in *Essex*, in consequence of the late rector having neglected to take the oaths pursuant to the statute 1. Geo.

THE bill stated, that the plaintiff was rector of the parish church of *Ingatestone*, in the county of *Essex*, and, as such, was entitled to all manner of tithes arising in the said parish, and in the titheable places thereof, or to some recompence for the same; that the late rector having neglected to take the oaths appointed by law, the said rectory, about *January* 1715, became vacant, and that the plaintiff was lawfully admitted, &c. thereto

1. c. 13. claims tithes in kind for the years 1716 and 1717.

as rector, and as such is entitled to all tithes, and in particular to the tithes of corn, grain, and hay, and all other tithes, both great and small, yearly arising upon all the lands, meadows, and pastures, within the rectory; that the defendant, in the years 1716 and 1717, occupied several acres of meadow and pasture lands, part of which he had ploughed and sowed with wheat and other grain, and had cut and carried away the crops, and had also mowed the grass of the remainder, and made the same into hay, and had carried away both the corn and the hay, and inned it without setting out the tithes thereof; that he also had cows and sheep and other titheable things, for all which he had refused to pay the tithes, or the values thereof, or to make any satisfaction for the same, on a pretence, that there was an agreement between him and the late rector to pay four pounds a-year in lieu thereof; but that no such agreement was now existing, and that he had given him notice, that he would take his tithes in kind for both the said years. The bill therefore prayed a discovery of the quantities, qualities, and values of the said tithes, and satisfaction for the same.

The defendant admitted that the plaintiff was rector of the said parish, as in the bill is alledged, and entitled to tithes, but denied that he knew when he became so entitled; and he said, that he had held a farm, for eleven years past, in the parish, and had paid the late rector four pounds a-year, in lieu of tithes, for the same: and set forth his titheable matters; and denied, that he fed or had had any sheep or lambs during the said years, or that the plaintiff had given him notice that he would take his tithes in kind for the said years.

The defendant says, there was an agreement with the former rector to pay him 4l a-year in lieu of tithes, and that the present had given no notice of taking tithes in kind.

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and upon reading the plaintiff's institution, dated the twenty-first November 1716, and the act of parliament, 1. Geo. 1. c. 13. and the proofs taken in the cause;

IT IS ORDERED BY THE COURT, that the defendant shall pay to the plaintiff four pounds for his tithes for the year 1716, and it is further ordered that the defendant shall account for tithes in kind for the year 1717; and it is referred to the deputy remembrancer to take the said account, and to tax the plaintiff his costs to this time.

The defendant decreed to pay the 4l. for the year 1716, and tithes in kind for 1717.

In obedience to the above order, the deputy made his report the fourteenth of May last; and upon reading the said decree and report, without exceptions, and hearing counsel for the plaintiff, it is ordered by the Court, on the first of January 1719, that the report be ratified and confirmed; and that the defendant shall forthwith pay to the plaintiff thirteen pounds, seven shillings, and sixpence, so reported due to him for his tithes of corn and hay, &c. with his costs, to be taxed by the said deputy.

WIDMORE

MICH. TERM,
5. GEO. I.

WIDMORE *against* BATCHELOR.

Southampton, 4th December 1718.

Therector of the
parish of *Litch-
field*, in *South-
ampton*, is en-
titled to the tithes
of *Litchfield Farm*
in kind.

THE bill stated, that the plaintiff, for three years past, had been rector of the parish church of *Litchfield*, in the county of *Hants*, and was lawfully entitled to all the rectorial tithes in kind arising therein, and in the titheable places thereof, or to some composition for the same; that the defendant *Batchelor* held a large farm called *Litchfield Farm*, within the said parish, which farm is the inheritance of the defendant *Kingsmill*, lord of the manor of *Litchfield*; and that the said *Batchelor* had thereon corn, grain, and hay, and also cows, mares, and sheep, as well as calves, lambs, colts, wool, milk, and several other titheable articles, for the tithes of which he had refused to pay the plaintiff, or to make him any satisfaction for the same, on pretence of there being a *modus* payable in lieu of the tithes of the said farm. The bill therefore prayed a discovery of the quantities and values of the said tithes, and an account for the same.

The defendant *Batchelor* admitted, that during the time the plaintiff officiated, and two years before, by leases under *Sir W. Kingsmill*, and the other defendant his son, he had held *Litchfield Farm*, by which lease it was agreed, that he should hold the same *tithe free*, and he denied, that to his knowledge, any tithe had ever been paid for the said farm in kind, but said, that there had been, time immemorial, an ancient *modus* of fifty pounds a-year always paid, till *October* 1681, in lieu of all tithes of the said farm; that he is ready to pay the same; and that he had not kept an account of his particular tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs taken in the cause, and on mature deliberation;

IT IS ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay the plaintiff for the tithes in kind of the lands and premises in question; and it is referred to the deputy remembrancer to take the account.

In pursuance of the said order, the deputy made his report, dated the thirteenth of *February* 1719, and upon reading the same, and the report without exceptions, it is ordered by the Court, that the report be ratified and confirmed, and that the defendant shall forthwith pay to the plaintiff (as executrix of her husband, who filed her *bill of revivor* to revive the said decree) the sum of two hundred and sixty-one pounds, one shillings, and sevenpence halfpenny, so reported due for his said tithes.

THO. BURY.

JA. MONTAGUE.

RO. PRICE.

F. PAGE.

EDGECOMBE

EDGECOMBE *against* DAN.MICH. TERM,
5. GEO. I.*Devonshire, 8th December 1718.*

THE bill stated, that the plaintiff, for several years past, had been lessee and farmer of the impropriate rectory of *Tavistock*, in the county of *Devon*, and was entitled to all the tithes of corn, grain, hay, wood, calves, lambs, pigs, and all other sorts, as well vicarial as predial tithes, and to all offerings and other duties arising therein; that the defendants, during that time had been inhabitants, owners, and occupiers, of divers farms, consisting of arable, meadow, and pasture lands, upon and from which they had corn, hay, and wood; that one *W. Hockaday*, having bought the *Shridd* of certain coppice or underwoods called *Pantycliffe Wood*, and *Stannidge Wood*, had cut and carried away the same; that the said defendants had kept on their said farms, cows, and mares, which had calves and colts, and also sheep which had lambs and wool, and other sheep which they bought and sold off again before shearing time, and that they had agisted dry, barren, and unprofitable cattle, and had fruit, roots, and other things, the tithes in kind of all which, as also *Easter* offerings, and duties ought to have been paid to the plaintiff, as lessee and farmer of the said rectory and tithes; but that the defendants had refused the payment of the same, pretending, that there was some *modus* payable in lieu thereof. The bill therefore prayed a discovery and account for the same.

The impropriator of *Tavistock*, in *Devonshire*, claims tithes of two woods called *Pantycliffe Wood*, and *Stannidge Wood*; of a tenement called *Parwell*; and a close called *Fitzford*.

The defendants said, that they had heard that the plaintiff was lessee, &c. as in the bill is stated, but what tithes, duties, and offerings did appertain to the rectory, or to the lessee thereof, they could not set forth, for that the owners of the lands in their respective possessions were generally under composition with the lessee for their tithes.

The defendants say they compounded.

The defendant *Dan* said, that he occupied, as tenant to *G. Courtenay Esq.* a tenement in the said parish, called *Parwell*, and the outhouses thereto belonging, with eleven acres of land called *Fitzford*, at forty four pounds, ten shillings a-year; that in the years 1711 and 1712, he, as well as the other defendants, rented of the plaintiff, and of several other persons, other lands; and that, by agreement, the lessors thereof were to pay for the tithes and duties of the same, a certain sum, and not tithes in kind, and therefore he had kept no account; but he set forth the same to the best of their knowledge. He also said, that within the said rectory, there had been, time beyond the memory of man, a custom, that every inhabitant should pay to the vicar one penny yearly, called an *hearth penny*, in lieu of all tithes of wood, furze, and other fuel burnt in their respective houses, which had been accordingly paid to and accepted by the vicar; and that

For the tithes of *Parwell* and *Fitzford*, for 44l. 10s. a-year;

and for their other lands at a certain sum; that there is a *modus* of 1d. a-year for all firewood.

EDGECOMBE
against
DAN.

That they had
cut no wood,
except for fuel
in their own
houses.

that they had not cut or carried away any wood or furze but what was burnt in their respective houses or laid up for that purpose; and that, for the reasons aforesaid, they had severally cut down and carried away, sold, disposed, or converted to their own use, the titheable matters they had, without setting out their tithes, or paying or agreeing with the plaintiff for the same; and that the agreement relating to their being discharged of tithes was the only reason they had acted as aforesaid; that the plaintiff filed his bill against the executrix of the said *William Hockaday* for the tithe of the wood he bought as in the bill is stated; to which the defendant appeared, and put in her answer, and said, that her husband bought the said underwoods tithe free.

The evidence
read;

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the proofs taken in the cause; and also articles of agreement, and a letter of attorney, dated the ninth of *June 1712*, between *Lady Letitia Russell* and the plaintiff; and hearing what could be alledged on both sides;

and tithes in
kind decreed.

IT IS ORDERED BY THE COURT, that the defendants shall and do respectively come to an account with the plaintiff before the deputy remembrancer for and concerning the tithes of their respective titheable matters and things demanded by the bill.

In obedience to the above order, the deputy made his report, dated the twenty-fourth of *July* last; and upon reading the said decree and report, it is ordered by the Court, on the twenty-sixth of *October 1719*, that the report be ratified and confirmed, and that the said defendants do severally pay to the plaintiff the several sums reported due for their several titheable matters and things for the time demanded by the said bill.

HILARY TERM
5. GEO. 1.

HATCHER, Widow, against HATCHER and Others.

Lincolnshire, 20th February 1718.

The rector of
Careby, in *Lin-*
colnshire, is enti-
tled to the tithes
of *Careby*, *Little*
Bythams, *Awnby*,
and of the closes
called *Berner's*
Close, *Harring-*
ton's Close, and
Lang Close.

See post. 112.

THE bill stated, that the defendant *William Cawthorne*, clerk, for thirty years past, had been rector of *Careby*, in the county of *Lincoln*, and was entitled to all tithes, dues, and profits, belonging to the said rectory; that, by indenture dated the second of *February 1697*, he demised to the plaintiff's late husband all tithes, great and small, arising from all the plaintiff's husband's lands in *Careby*, *Little Bytham*, and *Awnby*, from the twenty-fifth of *March* following, for sixty years, if he should so long continue rector, with certain covenants therein mentioned; that her husband, from the time of the demise, let his lands tithe free, and considerably advanced his own rent, and duly paid

paid him till his death ; that the plaintiff *Jane Hatcher* took out letters of administration, and paid *Cawthorne* what rent was due at the intestate's death, and that she, as administratrix to her husband, is entitled to the said lease, and thereby to the said tithes. The bill further stated, that the defendant *Parker* occupied a close of pasture, called *Berner's Close*, for one year ; which close was afterwards occupied by the defendant *Thatcher*, who sowed the same with oats ; that the defendant *Parker* also occupied *Harrington's Close* ; and the defendant *Ansell* certain grounds, called *Long Close Pasture*, which they mowed and made the grass into hay without setting out the tithes thereof ; that they had also many milch cows, sheep, lambs, and wool, the tithes whereof ought to have been paid in kind to the plaintiff ; that they also eat the herbage and produce of the said ground with unprofitable cattle, for which they ought to pay a proportionable rate tithe, according to the annual rent of the lands so eaten ; that they had also quantities of corn of divers kinds, but had refused to pay tithes, or to make the plaintiff any satisfaction for the same. The bill therefore prayed a discovery, and an account.

HATCHER
against
HATCHER
AND OTHERS.

The defendants admitted, that the lands and closes in the bill mentioned were formerly lands in the occupation of the plaintiff's husband, and that they lie within the rectory of *Careby*, or the titheable places thereof ; that the lease was made to the plaintiff's said late husband by the defendant *Cawthorne* ; and that they respectively occupied the lands during the time in the bill mentioned, except what are mentioned in their answers ; but they denied, that they occupied any other lands late *J. Thatcher's* within *Careby*, *Awnby*, and *Little Bytham*, within the tithing or rectory of *Careby*, during the time mentioned in the bill ; and they set forth the quantity and values of their titheable matters.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon reading an order, dated the twenty-third of *January* last, whereby the defendants undertook to appear *gratis* at the hearing ; and no counsel appearing for them ; and reading their answers ;

IT IS ORDERED BY THE COURT, that it be referred to the deputy remembrancer to take an account of what tithes are due to the plaintiff from the defendants for the time demanded by the bill, unless cause be shewn to the contrary ; the defendants first paying five pounds costs before they be heard.

Upon reading the said order, and no counsel attending for the defendants,

It is ordered by the Court, on the thirtieth of *April* 1719, that the said order be, and the same is hereby made absolute ;
and

against
HATCHER
AND OTHERS.

and on the twenty-seventh of *June* following, the report was confirmed, with costs to be taxed (a).

(a) See cross cause, post. page 112.

HILARY TERM
5. GEO. 1.

LLOYD against SMALL.
Essex, 23d February 1718.

The vicar of
Epping, in *Essex*,
is entitled to
the vicarial tithes
of *Bury Farm*,
Cobb's Fields,
Parvell's Farm,
and *Redsdale*
Farm, in kind.
See Rayner,
1093.

THE plaintiff, as vicar of the vicarage and parish church of *Epping*, in the county of *Essex*, stated, that he and his predecessors had, time out of mind, been entitled to all the tithes of grass, hay, wood, wool, lamb, and all other tithes and duties arising in the said parish, except the tithes of corn and grain; and charged, that the defendants, being inhabitants therein, did, for one year past, occupy several farms and lands lying within the said parish, and that they had kept thereon divers milch cows, sheep, and cattle, from which tithes did arise and grow due to him; and that they had several other titheable matters as in the bill charged, for which they ought to have paid tithes in kind, but which they had refused to pay, pretending, that there was some *modus* or customary payment in lieu thereof. The bill therefore prayed an account, and satisfaction for the same.

The defendants confessed, that the plaintiff was lawful vicar; but they denied, that he or his predecessors were entitled to any tithes or dues, other than those set forth in their answers.

The defendant *Small* confessed, that during the said year he had held the farm called *Bury Farm*, consisting of several quantities of arable, meadow, and pasture ground; and insisted, that there is a *modus* of eight pounds a-year payable in lieu of the tithes thereof. He also confessed, that he held the farm called *Cobb's Fields*, consisting of arable, pasture, and meadow ground; and insisted, that there is a yearly *modus* of one pound, ten shillings, payable in lieu of the tithes thereof.

The defendant *Chandler* confessed, that he held a farm, called *Parvell's Farm*, consisting of arable, pasture, and meadow lands, for which there is a yearly *modus* of four pounds payable.

The defendant *Parry* confessed, that in the said year he held a farm in the said parish, called *Redsdale Farm*, consisting of the same land, for which there is a *modus* of one pound, six shillings, payable yearly.

And all the defendants set forth what titheable matters and things they had in the said year; and admitted, that they had not set forth their tithes in kind; but insisted, that the plaintiff was not entitled thereto, but only to the several sums of money which they said were, time out of mind, paid to the former vicars, and no other, in full of all vicarial tithes, and which sums they averred the vicar had received.

The

DURING THE REIGN OF GEORGE THE FIRST.

111

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and on debate of the matter,

LLOYD
again?
SMALL.

THE COURT was of opinion, that the said several sums of money insisted on by the several defendants to be paid by them respectively as *modus*es for the vicarial tithes of their respective farms are not good and legal *modus*es (a).

IT IS THEREUPON ORDERED by the Court, that the defendants shall severally account with and satisfy the plaintiff for the value of the tithes of the several titheable matters and things which had arisen upon the several farms and lands by them respectively held and occupied within the said parish during the time in the bill mentioned. And it is referred to the deputy remembrancer to take the said account.

(a) It is said, that it appeared by the defendant's answer that the small tithes in kind demanded by the bill did not amount to more in that year than the pretended *modus*es ; and therefore the *modus*es were set aside. 3. Burn's E. L. 412. 433.

HILL *against* BARLOW.

HILARY TERM
5. GEO. 1.

Lincolnshire, 23d February 1718.

THE bill stated, that the plaintiff, for fourteen years past, had been rector of the parish and parish church of *Waddington*, in the county of *Lincoln*, and was entitled to all tithes arising therein and in the titheable places thereof, or to some rate or composition for the same ; that the defendant, for four years past, had been possessor or occupier of farms and lands therein, which he had sowed with corn and grain, and had reaped and inned the same without setting out the tithes thereof ; that he had meadow and pasture ground, and had depastured several dry, barren, and unprofitable cattle of his own, or had taken in by agistment, many whereof were kept and sold fat ; that he also had hay, and had kept several cows, which had milk and calves, and also had sheep, which had wool and lambs, and kept poultry, pigeons, and felled underwood, and had several other titheable things, and also *Easter* offerings, for which he refused to pay tithes, or make any recompence, under several pretences. The bill therefore prayed a full discovery and account for the said tithes.

The rector of *Waddington*, in *Lincolnshire*, is entitled to the tithes of *milk* and *foals* in kind.

The defendant said, that he believed the plaintiff was rector of the said parish, and entitled to all tithes as stated in the bill ; and he admitted, that for four years past he had occupied divers farms and lands ; but he denied, that in the years 1714 and 1715 he had ploughed, or sowed, or mowed, more than two hundred acres of land ; but he owned, that he stocked part of the said lands with several cattle, all his own, and not taken in

I

by

HILL
against
BALLOW.

by agistment; and he set forth his titheable matters.. He denied that he had cut any underwood, or had any fruits; and insisted, that he owed the plaintiff nothing for *Easter* offerings, save what was tendered to the plaintiff, or for any other titheable matters by the bill suggested, except only one year's *modus* for five cows, at ninepence each, the accustomed payment in the parish, and two shillings for two foals, at twelvepence each; and that he was willing to pay the plaintiff three shillings and ninepence for the year's *moduses* for the said cows, and two shillings for the said foals, which he said he had tendered, and was always willing to pay all his tithes and dues to the said plaintiff; and he set forth the same.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties,

THE COURT declared, that there was no *modus* due and payable for the tithes of milk or foals arising within the said rectory, but that the same are due and payable in kind.

IT IS THEREUPON ORDERED by the Court, that the defendants shall account with and pay to the plaintiff all the tithes in kind due to him, and demanded by the bill (except the tithes of corn and hay). And it is referred to the deputy remembrancer to take the said account. The costs to be reserved.

HILARY TERM
5. GEO. 1.

HATCHER against THE BISHOP OF LINCOLN and Others.

Lincolnshire, 20th February 1718.

The bill states, that the manor of Careby was granted to the plaintiff's ancestors; and that part of it was tithe free;

that the rector of Careby let the tithes of the remainder of the rectory to the plaintiff;

that *Cross Hills*, *March Field*, *Cold Oak*, and *Welsweet Fields*, in Careby, belong to the defendant as her jointure;

THE bill stated, that three parts in four of the manor of Careby, in the county of Lincoln, formerly belonged to the monastery of *Tatshall*, in the county of Lincoln, and the abbey of *Valle Dei*, and that a great part of it was tithe free; that the said manor, upon the dissolution of the said monastery, was granted by *Henry the Eighth* to the plaintiff *Hatcher's* ancestors; that the rectors of Careby used to lease to the plaintiffs *Hatchers*, the tithes of the said premises, at a composition very near the full value of the estate, for a term of years, provided the said rectors should so long live; that there being a dispute between *Sir John Hatcher* and *Mr. Sheffield*, the rector, concerning the tithes of the wood ground, warren, and conies to be saved to the said *Sheffield*, the plaintiff *Hatcher's* father allotted to *Mr. Soulthorp*, then rector, two closes of pasture, called *Cross Hills*, containing about thirty-five acres of glebe, lying in the open fields of Careby, called *Cross Hills*, *March Field*, *Cold Oak*, and *Welsweet Fields*, all which now belong to the defendant *Jane Hatcher* as a jointure at fifty-two pounds a year, and four hundred

hundred acres of furze; that the defendant *Cawthorne*, the present rector, received the rent of the said closes and furze, and was well satisfied that the said rent was of the full value of the tithes after the rate of two shillings in the pound, the wood excepted; that the said *Cawthorne*, understanding that woods were titheable when cut at eighteen years growth, demanded the tithe of the wood; and upon a reference it was awarded to him at forty shillings advance of tithes, and twenty poles of wood yearly, value twenty shillings, in lieu of tithe wood; that the said *Cawthorne*, on the second of *February*, in the year 1697, demised all his tithes to *Thomas Hatcher*, his heirs and assigns, and the annual payment of three shillings and fourpence for a water corn mill, except the tithes of hemp and flax, to hold to him, his executors, administrators, and assigns, for sixty years, if he should so long live and continue rector thereof, on the conditions therein mentioned; that by the statute passed 4. *Anne*, for raising money for payment of *T. Hatcher's* debts, all his estates in the said county were vested in trustees, as in the bill is mentioned; that before the passing of the said act, a treaty of marriage was had between him and *Jane Hussey*; that it appears by deed, dated the seventh of *March* 1704, fully set forth in the bill, that the defendant *Jane Thatcher* had prevailed upon the rector of *Careby* to accept the whole composition tithe from her; that the said lease of the tithes to *Thomas Thatcher* was no part of the inventory of his estate, but for the benefit of his heirs; yet the said *Jane*, as administratrix to her husband, has brought her bill in this court for tithes in kind against the said plaintiff, *T. Thatcher*, and tenants, though tithes were never paid in the memory of man, pretending, that without the benefit of such tithes she shall be disabled to pay her husband's debts; and that the defendant *Jane* had committed great waste on her jointure estate by cutting down timber. The bill therefore prayed, that the defendants may answer the matters; and that the composition and agreement for tithes may be confirmed by a decree of this court.

The defendants appeared and answered; to which answer the plaintiff replied; and the defendants rejoined.

The plaintiff filed his *supplemental bill* against the defendant *Jane*; to which she answered.

The cause stood in the paper of causes, but no counsel appeared for the plaintiffs; and on reading an order of court, dated the third of *January* last, whereby the defendants undertook to appear *gratis*, the defendant's counsel prayed that the said bills may be dismissed.

IT IS ORDERED BY THE COURT accordingly.

THO. BURY.
RO. PRICE.

VOL II.

I

GREGORY

HATCHER
against
THE BISHOP OF
LINCOLN
AND OTHERS.
that they had
been assigned to
the rector in lieu
of tithe wood;
that he demised
all his tithes to
T. Hatcher;

which *Hatcher's*
estates were as-
signed to trust-
tees;

but that they
were settled on
his wife.

The rector re-
ceives the whole
composition
from the joint-
ress.

Bill dismissed.

HILARY TERM
5. GEO. 1.

GREGORY *against* LUTTRELL and Others.

Devonshire, 23d February 1718.

The vicar of Braunton, in Devonshire, claims the small tithes of the Barton of Saunton Court, of the Borough Close and its adjoining tenement; of the rabbits sold out of the warren called Braunton Borowes; of hay, apples, cyder, cows, calves, &c.; and 10s. for the use of a sepulchre in the chancel of the church.

THE bill stated, that about *Easter* 1698 the plaintiff was instituted, &c. into the vicarage of Braunton, in the county of Devon, and entitled to all small tithes and offerings in the said parish; that the defendant Luttrell had ever since held and enjoyed the Barton of Saunton Court, the Borough Close, several tenements adjoining, and a rabbit warren, called Braunton Borowes; that he was under composition for all his small tithes, except the warren, and had paid the plaintiff in full to Lady Day 1713, from which time he is accountable to the plaintiff for all his small tithes; that from that time he had depastured on his said Barton and lands yearly a number of dry, barren, and young cattle, and had sold every year twenty fat oxen and other bullocks, and had much milk, many calves, much wool, many lambs, and several colts; that he had kept several mares and horses of his own, and had taken in others; that he also had a quantity of hay; that he also had apples, which he converted into cyder, and sold; that he had also sold fish from his fishery; and had various other kind of tithes, worth twelve pounds a-year, exclusive of the tithes of the Warren, and the *Easter* dues and offerings for his family; that he was also indebted ten shillings to the plaintiff for breaking the ground and making graves in the chancel of Braunton church; that the said warren was stocked with rabbits, and that he had sold at least three thousand every year; that the plaintiff desired him to account for and pay the tithes, and offered to accept two shillings a-year for every cow he had kept, one shilling for every calf, the like for every colt fallen, one penny for all gardens, and the like for all fuel burnt on the Barton, provided he would account for the rest; but that he pretended that rabbits were *fera natura*, and that therefore no tithes were due for the Warren; whereas his father and his ancestors had paid tithes for the warren, or compounded for it. The bill therefore prayed an account for the tithes of the Barton and the Warren, and for breaking the ground in the chancel.

The defendant insists on a deed of composition, and denies that any tithes are due either for fish or rabbits, or that he owes anything for the use of the chancel.

The defendant Luttrell admitted the plaintiff to be vicar, and that he, the defendant, had been possessed of the said Barton and of the warren as in the bill is stated. He also admitted, that he was under composition for all his tithes (save for the warren), and that he had paid the same to Lady Day 1713; and he insisted, that he had paid for or tendered the said plaintiff his tithes ever since; but that nothing was ever paid or due for the said warren, the rabbits being *fera natura*. He also admitted, that he had let out the warren to tenants; but he denied that he was bound to discharge the tithes of it; and he then set forth what beasts and cattle he had; and insisted, that he was under composition for his small tithes (except the warren); and that

he was but to pay five pounds a-year. He also insisted, that he had offered to pay the plaintiff for the other tithes in his answer mentioned, and for his *Easter* dues, for gardens, for the fuel burnt in the house, and for eggs; but that he never sent for the same. He also alledged, that he had no certain fishery or wear for which tithes were ever paid, nor had he sold more fish than to the worth of six shillings and eightpence; and he denied that his tithes were worth more than five pounds a-year, exclusive of the warren. He said, that he knew nothing of the customary fee of ten shillings for breaking the ground in the chancel, though he had buried eleven persons there.

GREGORY
against
LUTTRELL
AND OTHERS.

The said defendant put in a further answer, and the other defendants also answered, and set forth their titheable matters and things; and said, that they never knew any tithes paid for rabbits.

The other defendants, the tenants of the premises, answer to the like effect.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading certain articles of agreement or composition for tithes, dated the third of *March* 1639, between the defendant's father and the then vicar of the vicarage (a); and also the defendant's answer; and several proofs taken in the cause;

The evidence read.

IT IS THIS DAY ORDERED BY THE COURT, that the said bill, and all matters and things therein contained, as to and against the defendants *Lamprey* and *Williams*, shall stand dismissed, with costs to be taxed by the deputy remembrancer.

The bill, as against the tenants, dismissed with costs.

AND IT IS FURTHER ORDERED, that the defendant *Luttrell* shall and do forthwith come to an account with the plaintiff before the said deputy remembrancer for and concerning all the tithes and titheable matters by the said bill charged, and a discovery prayed (save only and except as to the tithes and duties for rabbits and fish, and for the defendant *Luttrell's* use of the chancel of the said parish-church).

The defendant ordered to pay all tithes, except for rabbits, fish, and the sum for the use of the chancel.

AND IT IS FURTHER ORDERED, that as for such excepted matters the said bill as to and against him shall also stand and be absolutely dismissed out of this court. The costs to be reserved as to the defendant *Luttrell*.

The bill, as to the excepted things, dismissed.

(a) See as to the reading of this paper in evidence, 12. Viner. Abr. 255. pl. 3. Rayner on Tithes, 1094.

EASTER TERM, THE EARL OF SCARBOROUGH *against* HUNTER and Others.

5. GEO. 1.

Durham, 4th May 1719.

The *Earl of Scarborough*, as impropriator of the parish of *Hart*, in *Durham*, claims 12d. in the pound for all fish caught at sea and brought into the port of *Hartlepool* and there sold, and the twentieth part of all fish so caught by the fishermen of the parish and sold elsewhere; all reasonable charges being first deducted.

S. C. Bunb. 43.

THE bill stated, that the plaintiff, the *Earl of Scarborough*, for forty years and more, had been seised in fee simple of the rectory impropriate of the parish of *Hart*, in the county of *Durham*; that within the said parish there is and hath been an ancient market and sea-port town, called *Hartlepool*, standing upon the coast of the sea, the principal trade whereof hath consisted in keeping and employing boats, cobs, and other vessels, in sea-fishing and selling of fish for profit; that the inhabitants of the said town of *Hartlepool* have used and accustomed to keep small fishing vessels, called *cobs*, wherein, by themselves or servants, they have used, at the usual and seasonable times in the year, to fish for, and take upon the main sea, cod, turbot, ling, herrings, and such other fish as are usually fished for and taken in the seas adjoining upon that coast; which fish so taken have been constantly either landed and sold in the town of *Hartlepool*, or sold by the fishermen at sea to ships trading thereupon; that the inhabitants of the said town have also used to keep ships, boats, and other vessels fit for the fishing trade, and have used to employ them in taking sea fish for sale upon the *Northern Seas* of GREAT BRITAIN, as also upon the *Yarmouth Seas*, during the time of the herring fishing there, and upon several other parts of the *British* seas at such times of the year as were seasonable for taking such various sorts of fish as those seas afford; which fish so taken were either sold at sea or landed at such ports or towns upon the *English* coast as the owners or masters thought fit; that the said *Earl of Scarborough*, and other the rectors, owners, and impropriators of the said rectory, have, time beyond the memory of man, been entitled to all tithes in kind, and to all prescript and customary annual payments in lieu of tithes, whether predial, personal, or mixed, and to all oblations and other ecclesiastical duties becoming due and payable to the rector of the said parish, either by the laws of the land, or by virtue of some ancient custom, usage, or prescription there used; that within the said parish there is, and, time whereof the memory of man is not to the contrary, hath been, an ancient usage and custom held and observed, that all and every the fishermen and others inhabiting within the said vill or township of *Hartlepool*, who are owners of any ships, boats, or cobs there, and which are employed in the fishing trade and the taking of fish upon the seas for sale, have, during all the time of their respective residences there, paid, and by the said ancient custom and usage ought and have used to pay, to the rector, owner, or impropriator of the said rectory or parsonage for the time being, the tithe or the tenth part of the said fish caught or

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HUNTER
AND OTHERS.

taken in, by, or with the said boats, cibles, or other vessels, or else certain customary duties and payments for and in lieu of tithe fish, and in full payment of all tithes and sums of money whatsoever, which by custom, usage, prescription, or otherwise, become due and payable to the rector, owner, or impropriator of the said rectory or parsonage for the time being, his tenants or farmers thereof, for and in lieu of tithe fish, and for and in lieu of all other ecclesiastical duties and payments due or payable to such rector, owner, or impropriator of the said rectory or parsonage for or by reason of all and every the profits and advantages arising or accruing to the respective owners of such boats, cibles, or fishing vessels so inhabiting as aforesaid; that the same have been constantly taken, received, and enjoyed accordingly by all the time aforesaid, THAT IS TO SAY, the owner or owners of the said boats or vessels did use and were obliged to pay to the rector, owner, or impropriator of the said rectory for the time being for all sea fish taken in their respective cibles or fishing boats, and landed at or in the said port or town of *Hartlepoole*, twelpence in the pound for every pound clear profit arising by the sale of such fish, and so in proportion for a greater or less sum than a pound, upon every landing or arriving of such cible or fishing boat, and the sale of the fish therein brought to shore, or afterwards when the same was lawfully demanded, if landed and sold at *Hartlepoole* aforesaid; but that if sold at sea, then, upon the landing or arriving of the cible or fishing boat wherein such fish was taken at *Hartlepoole* aforesaid, or afterwards when the same was lawfully demanded, for all sea fish taken, landed, and sold in any other port, haven, or town, or sold at sea upon any other coast, and not landed at *Hartlepoole* aforesaid, one *twentieth part* of the clear yearly profits arising and accruing to every such owner or owners so inhabiting as aforesaid by the sale of such fish as were caught or taken in their respective cibles or fishing boats (all reasonable charges being first deducted), to be paid at the end of each fishing voyage, or afterwards, upon every reasonable request on that behalf to be made; or some other sum of money by ancient usage and custom, time beyond the memory of man, hath been due and payable, and till very lately hath been paid, by the several owners of such fishing boats, &c. inhabiting within the said town, to the said *Earl of Scarborough* and his predecessors, rectors, &c. of the said rectory, their tenants or farmers, for the tithe fish there; that the said *Earl of Scarborough* being so seised, did, by lease dated the twenty-eighth of *December* 1708, demise all the said tithes of fish to the other plaintiff *Parkinson* for twenty-one years, who, by virtue thereof, received the said tithes until lately. The bill then charged the defendants to have been inhabitants there for five years past; that they had used the fishing trade; and that in each of the said years they had taken great quantities of fish, the tithes whereof were of value, which

THE EARL OF
SCARBOROUGH
against
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the plaintiff had demanded of the defendants, but which, he alledged, they had refused to pay. The bill therefore prayed a discovery and an account, and that the defendants might be decreed to continue the payments of the said customary duties in lieu of tithe fish.

The fishermen submit the legality of the custom to the Court.

The defendants admitted the plaintiff's title and the lease, and submitted the customs to the judgment of the Court, whether they were good or not.

The evidence read, by which the fishermen admit, that there is a customary payment in lieu of all tithes; but what those payments were not clearly appearing,

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the depositions of several witnesses, and hearing what was insisted on by the plaintiff's counsel; and it being admitted, by the answer of the defendants, that by custom the inhabitants of *Hartlepoole*, who were owners of boats employed in the fishing trade, had usually paid to the rector or impropriator of the said rectory of *Hart* a customary payment of *one twentieth part*, or *twelvepence in the pound* (after charges deducted), in lieu of tithe fish, and of all other tithes and sums of money which became due for and in lieu of tithe fish, and all other ecclesiastical duties and payments, by reason of the profits arising to the owners of such boats; but what such customary payments were not clearly appearing to the court, the witnesses of both sides disagreeing therein,

the Court propose 12d in the pound, or a twentieth part, without costs;

IT WAS BY THE COURT proposed to the plaintiffs to accept of twelvepence in the pound, or a twentieth part of the clear gain (after all charges deducted), for the tithe of the fish taken by the defendants, without costs on either side (a).

and the same being agreed to on both sides,

Whereupon the plaintiffs declaring their consent to accept of twelvepence in the pound clear gain (after all charges deducted) for the tithe of the said fish; and the defendants also consenting to pay the same without costs on either side, and without prejudice;

the Court decree the tithes accordingly.

IT IS THEREUPON ORDERED AND DECREED by the Court, by and with the consent of all parties, that the defendants shall severally account with and satisfy the plaintiffs for the tithes of the fish by them respectively taken during the time in the bill mentioned, after the rate of twelvepence in the pound for the

(a) It is said, S. C. Eunj. 43. that although the plaintiff did not prove his custom as laid in the bill, yet by three Barons against the Chief Baron an issue was directed to try, whether there was such, or any and what custom; although it was said, there never was an instance where either the plaintiff or defendant insisted on a *modus*, and did not prove it, that it ever went to a trial at law, it being essential to a *modus* that it be certain. It was also objected, that the

custom was illegal as it was laid; for if it be a personal tithe, as it was insisted upon, and as the Court seemed to think it, then a double tithe may be payable, not only in another port where the fish is sold, but also where the fishermen inhabit. To which the three Barons, against the Chief Baron, said, it was a good custom; for that one tithe may be paid by custom, and one of common right.

clear

clear gain arising by such fish (after all charges deducted). And it is hereby referred to the deputy remembrancer to take the said account.

THE EARL OF
SCARBOROUGH
against
HUNTER
AND OTHERS.

THE COURT FULL.

HENWOOD *against* MOCK.

TRIN. TERM,
5. GEO. 1.

Devonshire, 26th June 1719.

THE bill stated, that the plaintiff was, and for twenty years past had been, rector of the parish and parish church of *Warkley*, in the county of *Devon*, and as such was entitled to all manner of tithes, both great and small, in kind, or to some composition for the same, and also to all oblations, obventions, and *Easter* offerings arising therein; that the defendant, for eight years past, had enjoyed, in the said parish, a messuage, called *Newland*, three gardens, orchards, and lands, and a piece of pasture ground, called *Chiefly Marsh*, upon which he had, in the said years, several titheable matters and things, the tithes of which ought to have been paid to the plaintiff in kind, or some *modus* or composition for the same; that the defendant ought likewise to have paid to him *Easter* offerings for himself and family; but that he had taken away the tithes, and converted the same to his own use, and had refused to pay anything either for them or for his other dues. The bill therefore prayed, that the defendant might set forth the quantities, qualities, and values, and account for his said tithes.

The rector of
Warkley, in *De-*
vonshire, is enti-
tled to the tithes
of a messuage
called *Newland*,
and of a piece of
pasture ground
called *Chiefly*
Marsh, and to
Easter offerings.

The defendant admitted the plaintiff to be rector of the parish, and entitled to all tithes, both great and small, arising therein in kind, or to some recompence for the same; and he confessed that he had, during the time in the bill alledged, held and enjoyed the said messuage, tenement, and lands, as therein stated; and he set forth the quantities and values of his several titheable matters and things; but he insisted that he had, in each of the said years, set out all his tithes of corn, grain, hay, wool, lamb, pigs, apples, and potatoes, which he averred had been taken and carried away by the plaintiff; and as to all other his titheable matters and things which he had in the said years, and likewise for *Easter* offerings for himself and family, he said, that he had several times offered and tendered several sums of money, in the whole three pounds, eighteen shillings, to the plaintiff, in lieu and satisfaction for the same, and which he was ready to pay.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon reading the depositions of divers witnesses taken on the part of the defendant, and the defendant's answer, and on full debate;

I 4

IT

HENWOOD
against
Mock.

IT IS ORDERED BY THE COURT, that the bill, as to any demand of tithes of corn, hay, wool, lambs, pigs, apples, and potatoes, be and is hereby dismissed; but that the defendant is to account with and satisfy the plaintiff for the values of all and every other the titheable matters and things which had arisen and grown due upon the lands occupied by him within the said parish; and likewise for *Easter* offerings for himself and family during the time demanded by the bill; the account to be taken by the deputy remembrancer, and the consideration of costs to be reserved till after the report.

TRIN. TERM,
5. GEO. 1.

CARTER against SALT.

Southampton, 15th June 1719.

The rector of *Romsey*, in *Hampshire*, claims 10s. as a mortuary from the effects of every housekeeper dying worth 40l.; and states, that the defendant's wife had had two former husbands, who had died worth more than 40l. each.

He also claims the tithes of trefoil and depasturing cattle.

The defendants deny that any mortuary is due, and say, that no agistment tithes were ever paid.

THE bill stated, that the plaintiff had been, for many years past, farmer of the rectory and tenths of the parish of *Romsey*, in the county of *Hants*, and as such was entitled to all tithes happening there, except the tithes of flax, hemp, apples, pigs, geese, cows, milk, cheese, calves, pullen, honey, pigeons, handicraft trades, gardens, curtilages, eggs, and two cart loads of hay out of *Small Mead*; that, by custom within the said parish, there is due a mortuary of ten shillings on the death of every housekeeper within the said parish dying possessed of a personal estate worth forty pounds after his debts are paid; that the defendant *Hannah* married *Richard Hayter*, who died possessed of a personal estate above the value of forty pounds, and made her his executrix; that she afterwards married *A. Candy*, who died possessed as aforesaid, and made her his executrix; that she afterwards married the defendant *Salt*; that there was due to the plaintiff a mortuary of ten shillings, according to the custom of the said parish, on the death of each person, which mortuary he had demanded of the defendant, but that he had refused to pay the same; that there is also due from the said defendants to the plaintiff several other titheable matters and things, such as the tithe of trefoil grass, and for sheep, ewes, wool, and lambs, which had been depastured, shorn, and fallen, within the said parish; and also for agistment of horses and other cattle for several years past. The bill therefore prayed, that the defendants might answer, and particularly set forth, whether mortuaries are not due by custom within the said parish, and account for their several titheable matters and things as aforesaid.

The defendants said, that they believed the plaintiff was farmer of the rectory and tithes as in the bill is stated, and was thereby entitled to the tithes of corn and hay, but that the privy tithes belonged to the vicar; that they did not believe that a mortuary of ten shillings, or any other sum, is due by custom as before alledged; and they set forth their other titheable matters and things; and said, that they knew not that agistment tithe

was

was due to the plaintiff, or that such tithe had ever been paid.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon reading an ancient book in the handwriting of *E. Hooper*, formerly farmer or occupier of the said rectory of *Romsey*, under the dean and chapter of *Winchester*, whereby it appeared that mortuaries had been paid within the said parish from the year 1633 to 1638 to him as farmer of the said rectory ; and likewise upon reading the depositions of divers witnesses taken on both sides ; and on long debate ;

THE COURT declared, that tithes for the agistment of all cattle fed and depastured by the defendant *Salt* upon his lands within the said parish of *Romsey*, during the time in the bill mentioned, ought to have been paid to the plaintiff by the said defendant.

IT IS THEREUPON ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay to the plaintiff the values of the tithes of the agistment and depasturage of all cattle fed and depastured upon the said defendant's land within the said parish during the time in the bill mentioned.

AND IT IS ALSO ORDERED, that the said defendant *Salt* and his wife shall account with and satisfy the plaintiff for the values of the tithes of trefoil had by the said *A. Candy*, the defendant *Hannab's* former husband, during the time in the bill mentioned.

AND IT IS ALSO ORDERED, that the said defendant *Salt* shall account with and satisfy the plaintiff for all other titheable matters and things had by the said *A. Candy*, or by the said defendant *Hannab* within the said parish during her widowhood before her intermarriage with the defendant *Salt*, or by him, during the time in the bill, except for the tithes of sheep till *Lady Day* 1716.

And it is referred to the deputy remembrancer to take the said account.

And as to the *mortuary* of ten shillings demanded by the bill upon the death of the said *A. Candy*, the said defendant doth submit to pay the same to the plaintiff ; which the Court doth order to be paid to the plaintiff by him accordingly.

And as to the mortuary of ten shillings also demanded of the defendant *Salt* and his wife upon the death of the said *R. Hayter*, the defendant *Hannab's* former husband, it is ordered by the Court, that it be referred to a trial at law ; the issue therein to be, " Whether by custom within the said parish, mortuaries are due and payable to the farmer of the rectory ; " the said issue to be tried by a special jury, and the consideration of costs to be reserved till after trial.

CARTER
against
SALT.

The evidence
read.

The tithes for
depasturing cat-
tle decreed ;

and ordered to
be paid accord-
ingly.

The defendant
ordered to pay the
value of the tre-
foil tithes due
from his wife's
late husband ;

and for the tithes
due from her
during her wi-
dowhood ;

and for the mor-
tuary on the
death of her se-
cond husband ;

An issue direct-
ed as to the
mortuary due on
the death of her
first husband.

In

CARTER
against
SALT.

The jury find
there is no such
custom in the
parish of Rom-
sey.

In pursuance of the above order, a trial was had upon the said issue; and after a long and full evidence given on both sides, the jury gave their verdict, "that within the parish of *Romsey* there is not such a custom, namely, that upon the death of every parishioner and inhabitant of the parish of *Romsey* dying within the same parish possessed of goods to the value limited by the statute in such case made and provided, a mortuary hath been accustomed and ought to be paid to the rector of the rectory of the parish church of *Romsey*, or to the farmer of the tithes of that parish for the time being, as was by the plaintiff affirmed."

A new trial re-
fused.

The cause standing in the paper for further directions, the plaintiff prayed a new trial; and MR. BARON MONTAGUE having spoke to the judge of the assize who tried the same, who declared, that he had no dislike to the verdict given by the jury, but was well satisfied therewith,

THE COURT, upon consideration of what was insisted upon by the counsel on both sides not seeing any cause to grant a further trial of the said issue,

The bill, as to
the said mortu-
ary, dismissed.

IT IS ORDERED BY THE COURT, that the said bill, as touching the mortuary thereby demanded of the defendants upon the death of *R. Hayter*, the defendant *Hannab's* first husband, be, and is hereby absolutely dismissed with costs at law to be taxed for the said defendants by the deputy remembrancer.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

TRIN. TERM,
5. GEO. 1.

RHODES against WALKER and PHILLIPS.

Staffordshire, 27th June 1719.

The rector of
Cheekley, in *Staffordshire*, states,
that there is a
modus of 2s. in
the pound rent,
in lieu of the
tithes of all
lands ploughed
or depastured
with any sort of
cattle by persons
holding lands
and living out of
the parish; and
claims the same
for the *Manor*
John's Field.

THE bill stated, that the plaintiff was rector of the parish of *Cheekley*, in the county of *Stafford*, and entitled to tithes in kind of all sorts of corn and hay growing therein, and to the annual and customary sum of two shillings in the pound for a year, and proportionably for any less time, payable as a tithe for all lands in the said parish ploughed or depastured with any sort of cattle by any persons not inhabiting within the parish, according to the yearly value of the lands so depastured; and that the said rate had been, time immemorial, paid to the plaintiff or his predecessors; that the defendant *Walker* was, and for nine years last past had been, an inhabitant of *Stafford*, and not of *Cheekley*; and that the defendant *Phillips*, of *Cheekley* afore-said, or one of them, have, during the said time, been tenant, owner, and possessor of lands within the said parish, and had ploughed

ploughed and sowed the *Nearer John's Fields* with oats, and other fields in the like manner ; that in the said years the defendant *Walker* had depastured the same ; the tithe thereof, by the said custom, amounted to a considerable sum ; that they had carried away their corn, grain, and hay, without setting out the tithes thereof, and had refused to pay the said customary payment of two shillings in the pound for the cattle so depastured on the said fields. The bill therefore prayed, that the defendants may set forth their several tithes, &c. and account.

RHODES
against
WALKER AND
PHILLIPS.

The defendants admitted that the plaintiff was entitled to all tithes in kind within the said parish, except of such lands for which a certain sum of money as a *modus* was annually paid to the plaintiff or his predecessors ; but they denied, that he was entitled to two shillings in the pound, as in the bill is stated.

The defendants deny that there is any such *modus* ;

The defendant *Walker* said, that he had purchased, about eleven years since, the lands in the bill mentioned, and in the year 1703 had part fed and sowed the same with oats, but that no tithe of corn, hay, or herbage, had ever been demanded for the said lands ; that he sold all his corn and hay to the defendant *Phillips*, and from *Lady Day* 1704 had let to him the said lands to *Lady Day* 1710, and had then taken the same for one year, and afterwards let them to *W. Carrington*, who now holds the same ; but what was ploughed, sowed, or grazed he knew not ; and he set forth the number of acres which each field contained. He denied that he had promised to pay the plaintiff tithes in kind, or that there was any customary payment, except three shillings and fourpence yearly as a *modus* for all manner of tithes in kind arising out of the said lands, the same being part of the demesne lands of *Paynsley* ; and which sum he had duly tendered ; that the said *modus*, time beyond memory, had been always paid in lieu of all tithes for *Hicklin's Meadow*, the *Further John's Field*, the *Nearer John's Field*, the *Corw Hay*, and the *Birchen Close*.

and state, that there is a *modus* of 3s. 4d. a-year payable for *Nearer John's Fields* and other lands, in lieu of all the tithes thereof ;

The defendant *Phillips* said, that the said lands being part of *Paynsley Demesne*, did not pay tithe, but a *modus* of three shillings and fourpence ; and that, in consideration thereof, he had given the greater rent for it ; that he had left the same at *Lady Day* 1710 ; that he had bought the defendant *Walker's* stock of corn and hay ; and that he had sowed oats and barley in the year 1704 in *Nearer John's Field* ; but that he had not sowed any other of the lands during the time he rented the same ; and he said, that he could not tell whether two shillings to the pound herbage had been always paid by an occupier living out of the parish.

that the said lands are part of *Paynsley Demesne*.

The plaintiff replied ; the defendants rejoined ; and before witnesses were examined the plaintiff died, whereby the suit abated ; but *J. Taylor* and *W. Best*, his executors, filed their
bill

The plaintiff dies, and the suit is revived.

RHOADES
against
WALKER AND
PHILLIPS.

bill of revivor; and by order, dated the sixteenth of *July* 1717, the proceedings were revived, and witnesses were examined; and upon reading several of the proofs taken in the cause, and on debate of the matter;

An issue directed to try, whether there is such a *modus* as that set up by the defendants;

IT IS ORDERED BY THE COURT, that it be referred to a trial at law upon this issue, "whether there be a *modus* of three shillings and fourpence payable in lieu of all tithes for the "*Hicklin's Meadow, the Further John's Field, the Nearer John's Field, the Cow Hay, and the Brechen Close*, being the lands for which the said *modus* of three shillings and fourpence is insisted upon by the defendants in their answers to be paid in lieu of all tithes?"

and a verdict given for the plaintiff, which is confirmed on a new trial.

By an order, dated the twenty-eighth of *July* 1728, that the above issue should be tried, a trial was had, and a verdict given for the plaintiffs; but by another order, dated the thirteenth of *May*, a new trial was directed to be had on the same issue; on which new trial another verdict was given for the plaintiffs.

The defendants decreed to account for tithes in kind.

Now, on the twenty-fourth of *November* 1729, upon reading the decree and the *posseas*, and upon hearing counsel praying that the defendant might be decreed to account for tithes in kind arising from the aforesaid grounds, it is ordered by the Court as prayed, and referred to the deputy remembrancer to take the account.

In pursuance of the said order, the deputy made his report the twenty-second of *March* 1733; and on the ninth of *May* 1734,

The report of the amount of the tithes due confirmed.

IT WAS ORDERED BY THE COURT, that the said report be ratified and confirmed, with costs at law and in this court; and that the said defendant do pay the value of the tithes reported due, being fourteen pounds, nine shillings.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
W. THOMSON.

TRIN. TERM,
5. GEO. 1.

DODSON against NORTON.

Suffex, 27th June 1719.

The rector of *Hurfterpoint*, in *Suffex*, claims tithes of lands called *the Barren*, and states, that the defendant fraudulently re-

THE bill stated, that in *February* 1701 the plaintiff was instituted, &c. into the rectory and parish church of *Hurfterpoint*, in the county of *Suffex*, and entitled to all tithes, oblations, and duties, arising in the said parish, or to some satisfaction for the same; that the defendant, for two years, was an inhabitant and occupier of divers farms and parcels of arable, meadow, and moved his cows and sheep into other parishes, to avoid paying him the tithes of their calves and lambs.
pasture

pasture land, which he sowed with wheat, barley, and oats, and inned the same without setting out the tithes or making any satisfaction for the same; that he had also fed great numbers of barren and unprofitable cattle, and had also kept and fed cows, sheep, and hogs, and had pigs, calves, and lambs, and had agisted oxen, mares, colts, heifers, and runts, without paying any tithes, or making any recompence for the same; that in particular when the defendant's cows and sheep were ready to produce their young, he removed them into other parishes on purpose to prevent the plaintiff from receiving the tithes of the same, and after they had calved and lambed, brought them back, with their calves and lambs, into the plaintiff's parish, without paying him anything for the tithes thereof; and that the defendant was in arrear for his *Easter* offerings. The bill therefore prayed an account and satisfaction for the same.

DODSON
against
NORTON.

The defendant confessed, that it might be true that the plaintiff, for the time in the bill mentioned, had been and is rector of the said parish, and as such entitled to all tithes, both great and small, and to all rates, payments, dues, and duties. He also confessed, that he occupied the field called *the Barren*; but insisted, that no tithes are due for the same, and that the plaintiff had taken away the tithes of the corn which he had growing on his other lands. He also said, that for the most part he had kept his cows and sheep on other lands lying in the adjoining parishes, where his calves and lambs fell, and that he had there paid his tithes for the same. He admitted, that he was an inhabitant of the plaintiff's parish, and had not paid *Easter offerings*, none having been demanded of him; and he said, that he believed the value of his tithes which remained unpaid to the plaintiff did not exceed forty shillings a-year. He also said, that by reason of the intermixture of feeding his cows, sheep, and cattle, in the several parishes, he could not set forth the value, and that, to avoid trouble, he had offered to pay the plaintiff four pounds for the same, in full for his tithes for two years, together with costs, and which he had left with his clerk in court; that soon afterwards the plaintiff gave notice, that he would accept of the said tender with his costs; but the same being neglected to be paid, he had obtained an order *nisi* for that purpose, or in default thereof he should set down his cause to be heard; which order was made absolute.

The defendant says, that no tithes are due for *the Barren*, and that he had paid the tithes of calves and lambs in other parishes;

that he had tendered 4l. to the plaintiff, and paid it into court;

which the plaintiff had agreed to accept in full of all tithes due.

The cause came on this day to be heard; and no counsel attending for the defendant, the Court, upon reading an affidavit of the service of the *subpoena* to hear judgment, and also the said defendant's answer, with the said orders, ORDERED, that the defendant do forthwith pay to the plaintiff four pounds, with his costs as tendered; and it is referred to the deputy remembrancer to tax the same, unless cause be shewn to the contrary.

The defendant neglects to attend the hearing of the cause, and the 4l. with costs, ordered to be paid.

On

DODSON
against
NORTON.

On the sixteenth of November 1719, upon reading the above order, and no counsel appearing for the defendant, it is ordered by the Court, that the said order be, and the same is hereby made absolute.

TRIN. TERM,
5. GEO. 3.

GLANVILL against TRELAWNY ; *et à Contra.*

Cornwall, 1st June 1719.

The rector of *St. Germain's*, in *Cornwall*, claims all great and small tithes of the parish, excepting the tithes of corn and grain on lands called *South Coldrinnick*, *North Coldrinnick*, *Trefulgan*, and *Trehurst* and *Jorie's Tenement*.

S. C. Bunb. 70.

THE bill stated, that the plaintiff, for seven years past, had been impropiator of the rectory of *Saint Gormain's*, in the county of *Cornwall*, and entitled to all tithes of corn, grain, hay, wood, milk, calves, lambs, wool, apples, fruit, roots, agistment of cattle, and all other tithes in the said parish (except the tithes of corn and grain on lands called *South Coldrinnick*, *North Coldrinnick*, *Trefulgan*, and part of *Trehurst Tenement*, in the parish of *Saint Germain*, which tithes were claimed by and paid to the vicar of *Minhenniot*); that the defendant, ever since *Michaelmas* 1714, had been possessed of several tenements and lands, called *South Coldrinnick* and *North Coldrinnick* and *Trefulgan*, containing two hundred and forty acres, in the said parish, the tithes of which were of great worth; that he had kept on the said lands many cows, which gave milk and had calves; that he had horses, colts, sheep, lambs, and wool, and had fed dry and unprofitable sheep and cattle, both of his own and of others, taken in by agistment, and had made great profits of the said lands, and had mowed and carried away the hay and grass thereof, and had felled, sold, and disposed of great quantities of fruits, roots, honey, and poultry, and other titheable matters, whereof he ought to have paid his tithes, but which he had refused to do, on a pretence that there was some *modus*, &c. and that no tithes in kind were due. The bill therefore prayed a discovery of quantities and values, and an account for the same.

The defendant says, that there is a *modus* of 6s. 8d. for each of the said lands, except *Jorie's*, and of 4d. a-year for *Jorie's*, in lieu of all small tithes.

The defendant said, that since *Michaelmas* 1714 he had been possessed of two tenements in *South Coldrinnick*, and of a small parcel of land anciently part of *Jorie's Tenement*; of two tenements in *Trefulgan*, one tenement in *North Coldrinnick*, and the lands thereto belonging; and he set forth the other tenements and lands which he held therein; but said, that he could not set forth the titheable matters thereof, as he lived at *Plymouth*. But he said, that the plaintiff was not entitled to the small tithes of all or any part of the said tenements and lands; and that no small tithes in kind had ever been paid, or ought to be paid, to the impropiator of *Saint Germain's*; for that, time out of mind, there had been, and still was, an ancient composition, or *modus decimandi*, that all occupiers of the said tenements (save of *Jorie's Lands*) ought to pay six shillings and eightpence a-year, and no more, for each tenement and the lands thereto belonging, in lieu

lieu of all the small tithes thereof; that there had also been beyond memory, and still was, another ancient custom, that all occupiers of *Jorie's Lands* ought to pay fourpence a-year, and no more, in lieu of all the small tithes thereof; that the said customary payments had been constantly received in full satisfaction for the said respective small tithes, and that no small tithes had ever been paid in kind or demanded before; and that he was willing and ready to pay according to the said custom; and, insisting on the same, prayed the judgment of the Court, whether he should be compelled to answer the plaintiff for the small tithes of the said premises, other than as aforesaid.

GLANVILL
against
TRELAWNY;
et à Contra.

The defendant filed his *cross bill* to discover the said ancient *modus*, and prayed, that they might be established by the decree of the court for the said six tenements.

The defendant files a cross bill to establish the *modus*.

The impropiator put in his answer, and admitted, that *Trelawny* was seised in fee simple of the said tenements; but said, that he believed the said sums were compositions, and not *modus*, as by the tithe books, commencing from the year 1624, the sums appeared to have varied at different times.

The rector says, they are not *modus*, but compositions.

The plaintiffs in both the causes replied; the defendants rejoined; and divers witnesses were examined on both sides; and upon reading the proofs, and on debate of the matter;

IT IS ORDERED BY THE COURT, that the defendant *Trelawny* do satisfy and pay the plaintiff tithes in kind of all hay had and enjoyed by the said defendant from off his lands lying within the said parish of *Saint Germain's*, and the titheable places thereof, during the time demanded by the bill. And it is referred to the deputy remembrancer to take the account.

The defendant ordered to pay the tithe of hay.

AND IT IS FURTHER ORDERED, that it be referred to a trial at law to be brought by the plaintiff *Glanvill* upon this issue: "Whether, time out of mind, there hath been an ancient composition or *modus decimandi* within the parish of *Saint Germain's*, that all occupiers of the respective tenements in *South Coldrinnick*, *Trefulgan*, and *North Coldrinnick* (save *Jorie's Lands*), in the defendant *Trelawny's* possession, used, and ought to pay six shillings and eightpence a-year, and no more, for every such tenement and land thereto belonging, in lieu of all small tithes; and that all occupiers of *Jorie's Lands* paid and ought to pay fourpence a-year, and no more, in lieu of all small tithes."

An issue directed to try the existence of the *modus*.

A trial was accordingly had, and a verdict was obtained against the plaintiff *Glanvill* by a nonsuit; and in obedience to the said decree, the deputy remembrancer made his report, dated the fourteenth of *February* instant.

The plaintiff is nonsuited.

These

GLANVILL *against*
TRELAWNY ;
et à Contra. These causes now, on the twenty-fourth of *February* 1720, came on upon the equity reserved ; and upon reading the decree and report, the plaintiff's counsel prayed *a new trial*.

A new trial prayed, but refused.

The value of the tithe hay decreed, But IT IS ORDERED BY THE COURT, that the said report be ratified and confirmed, and that the defendant *Trelawny* do forthwith pay to the plaintiff five pounds for the value of the tithe hay for the said two years in the said report mentioned, with the costs as to the tithe hay to be taxed by the said deputy.

The original bill, except as to tithe hay, dismissed with costs. AND IT IS FURTHER ORDERED, that *the original bill*, as to the other titheable matters for which the plaintiff *Glanvill* seeks relief be, and the same is hereby dismissed with costs at law and in equity, to be likewise taxed by the said deputy.

The cross bill dismissed with costs. AND IT IS FURTHER ORDERED, that the *cross bill* be, and the same is hereby dismissed out of this court, with costs to be taxed by the said deputy remembrancer of this court.

THO. BURY.
RO. PRICE.

TRIN. TERM,
5. GEO. 1.

GLANVILL *against* HANCOCK and Others.

Cornwall, 1st June 1719.

The impropriator of *St. Germain's*, in *Cornwall*, is entitled to the small tithes of the said parish in kind.

THE plaintiff, as impropriator of *Saint Germain's*, in the county of *Cornwall*, filed his bill against several inhabitants of the parish for their tithes in kind, and prayed, that they might make a discovery of quantities and values of the same, and come to an account for their said tithes.

The defendants admitted that the plaintiff was impropriator, and entitled to all tithes ; and they set forth the several lands which they held in the parish, and the titheable matters they had thereon, with the quantities and qualities thereof ; but they insisted that small tithes were not payable in kind, for that, time out of mind, there had been a *modus decimandi* : FIRST, To pay the tenth lamb at *Saint Mark's Day*, if there were ten living on that day ; and if but seven, eight, or nine, then to pay the seventh, eighth, or ninth, and to be allowed the second, third, or first the next year, to make up ten ; and that if there were under seven, no tithes were payable in kind, but one farthing for each lamb in lieu thereof ; and that if there were a greater number than ten, then for every one above ten and under seven a farthing for each was to be paid. SECONDLY, That for calves, if there were the number seven or above, then one calf at *Easter*, the odd calves to be allowed in reckoning next year ; that if there were under seven, then to pay for each calf reared one halfpenny, and for those fed and killed one penny each.

THIRDLY,

THIRDLY, For milk, butter, and cheese, one penny a-year for every cow. FOURTHLY, For every hogshead of cyder, twopence; and if no cyder be made, then twopence for every orchard, in lieu of apples. FIFTHLY, For the milk of ewes, one penny for every four, and so proportionably for more or less. SIXTHLY, For every garden, one penny, called a garden penny. SEVENTHLY, For tithe hay, the tenth cock, at the first raking up. EIGHTHLY, For tithe wood used in the family, an hearth penny. NINTHLY, For every colt or foal, fourpence. TENTHLY, For sea fish, the twentieth fish, or twentieth penny. ELEVENTHLY, For honey, the tenth comb; if not ten, then a proportionable part. TWELFTHLY, For young pigs, the tenth. THIRTEENTHLY, For geese and other poultry and eggs, nothing is ever paid, except eggs and bacon at *Easter* in lieu thereof. And they said, that they were ready and willing to pay the plaintiff his full due, and to bring the same into court with his taxed costs.

GLANVILL
against
HANCOCK
AND OTHERS.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on full debate of the matter,

IT IS ORDERED BY THE COURT, that the defendants do severally satisfy and pay to the plaintiff his tithes in kind for the several titheable matters and things in question, had and enjoyed by them within the said parish and the titheable places thereof during the time demanded by the bill, with his costs to be taxed. And it is referred to the deputy remembrancer to take the account, and to tax the costs.

In pursuance to the above order, the deputy made his report, dated the fourteenth of *February* instant; and upon reading the said decree and report, without exceptions, it is ordered by the Court, on the twenty-third of *February* 1720, that the said report be ratified and confirmed, and that the defendants do severally pay to the plaintiff the several sums reported due for the value of their tithes, together with the plaintiff's costs of this suit, to be taxed by the deputy remembrancer of this court.

THO. BURY.
RO. PRICE.

LEWIS against BOWEN and Others.

HILARY TERM
6. GEO. 1.

Radnorshire, 8th February 1719.

THE bill stated, that the plaintiff was vicar of the parish church and vicarage of *Nantmell*, and of the several chapels of *Llanrye* and *Llanvickangel Heligen*, and of the borough of *Rayader*, in the county of *Radnor*, and so lawfully had been for fifteen

The vicar of
Nantmell, in
Radnorshire, with
the chapels of
Llanrye, *Llan-*
vickangel Heligen.

and the borough of *Rayader* annexed, claims a moiety of the small tithes arising in the said places.

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years

LEWIS
against
BOWEN
AND OTHERS.

years last past, and had constantly performed the duties there, and had thereby become entitled to a moiety of the tithes and profits belonging to the said vicarage and places aforesaid, in the same manner as his predecessors had enjoyed the same; that, time out of mind, by ancient endowment, the vicar for the time being had received the moiety of all tithes of herbage, corn, grain, calves, lambs, wool, pigs, cheese, honey, flax, eggs, turnips, carrots, and all other tithes and titheable matters there yearly arising; that by virtue of such custom, the same ought to be paid to the vicar for the time being; and that, by such custom, the plaintiff's predecessors had and received (besides the moiety of the said tithes) as followeth, *viz.* fourpence at *Easter* for every married man, being a landholder or master of a family; twopence for every single person being a landholder and master of a family; twopence for every person residing there, being sixteen years of age; one shilling for every cow with calf; sixpence for every barren cow; one halfpenny for every householder, for tithe hay; and one penny for every calf. To which said moiety the plaintiff, as vicar, is well entitled, and ought to have received the same; that the defendant *Bowen*, and several others, for fifteen years past, had been householders, and had considerable estates or farms in the said parish; and that, by means and usage, the plaintiff is entitled to a moiety of the said tithes and duties, and ought yearly to have received the same; but that the said defendant *Bowen* had refused to pay the same, on a pretence that there is a *modus* in lieu thereof. The bill therefore prayed a discovery, and that the defendants might account.

The defendant says, that he enjoys a tenement in *Llanwickangel*, called *Cockley Droft*; that the plaintiff filed a former bill against him for the said tithes, which was settled; and that he has either paid or tendered to him the value of those which have since become due according to the custom set forth; and that the present bill is frivolous and vexatious.

The defendant said, that he did not know that the plaintiff was instituted, &c. into the said parish, &c. nor that *Royader* is a distinct vicarage; but that if the plaintiff was instituted, it must have been to the vicarage of *Nantmell* with the chapels annexed; that he, the defendant, first came to inhabit in *Llanwickangel Heligen* in *April* 1713, and enjoyed a tenement there, called *Cockley Droft*; that the plaintiff filed his bill for a discovery of his tithes and duties, whereto he the defendant had made a full discovery, with the particulars and values, for the four years to the time of filing the bill, and what he had paid; and that there remained unpaid two pounds, eight shillings; and he offered to pay the same by his answer; that in the *Easter Term* following, he obtained the usual order for the tender, or for the plaintiff to proceed at his peril; that in the *Trinity Term* following, the plaintiff accepted the sum tendered, and his costs, which were paid; and therefore he insisted, that he ought not to make a new discovery of the tithes due in those years; that in the year 1717 he held the said tenement (except a small part), and then offered the plaintiff sixteen shillings in lieu of all tithes due to him, which the plaintiff would not accept, but insisted upon

upon taking his tithes in kind ; that the plaintiff gave notice that he would have his tithe cheese paid in kind, and that he, the defendant, ordered all the milk that he had from his cows to be kept apart and made into cheese on every twentieth day from the first of *May* to the first of *November* ; that the said milk had produced nine cheeses, which were worth five pounds, and which he had carried to the plaintiff's house, and had delivered the same to him. He then set forth the quantity of oats he had ; and averred, that he had paid the tithe thereof in kind to the plaintiff. He also said, that there was, in that year, one tithe pig due to the plaintiff, which he offered to him, but that he had refused to accept of it ; and that he had delivered the same to the impropiator's farmer, who had an equal right thereto. The defendant then set forth the quantity of hemp he had ; and averred, that he paid the tithes thereof in kind. And he further insisted, that there is, by custom, one penny due for tithe hay, one penny for calves, fourpence for offerings for a married couple, and twopence for every single person ; and said, that he had three in family besides himself ; and that the said offerings came to eightpence. He also said, that on the twelfth of *May* 1717 he had tendered the plaintiff twelvepence, in lieu of his share of the hay, calf, and offerings, but which he had refused to accept. He also set forth the quantities of onions, turnips, and carrots he had ; and averred, that he had offered the plaintiff the tithes thereof, but which he had refused to accept, and had brought this vexatious suit, and another in the consistory court for the same ; that the said plaintiff's pretended demands are of small value, and beneath the dignity of the court ; and that he had paid for the other moiety of all his tithes and duties for that year to the impropiator's farmers but fourteen shillings.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and on reading some of the proofs taken in the cause, and on full debate ;

IT IS ORDERED AND ADJUDGED BY THE COURT, that the defendant *Bowen* be dismissed from the said bill, and the matters and things therein contained, with costs to be taxed by the deputy remembrancer of this court to be paid by the plaintiff to the defendant.

LEWIS
against
BOWEN

AND OTHERS.

states, that he made the milk from *May* to *November* into cheeses, and gave them to the plaintiff in lieu of tithe milk ;

that he had paid him the tithes of oats, pigs, and hemp, in kind ;

that there are *modus*es of 1d. for tithe hay ; 1d. for calves ; and 4d. and 2d. for *Easter* offerings ;

that he had tendered the tithes of onions, turnips, and carrots, in kind.

The evidence read.

The bill dismissed with costs.

ANSCOMB against STEDDALL and Others.

Surry, 8th February 1719.

HILARY TERM
6. GEO. I.

THE plaintiff, as administrator with the will annexed of *D. Maynard*, deceased, stated, that the said *D. Maynard* was at his death, and for nine years past had been, farmer of all and in *Surry*, is entitled to tithes in kind of *Tandridge Mead*, *Horv Mead*, and *Black Grove Coppice*, lying in the *Wield* of the county from *Gay Mead* southward.

The farmer of *St. James the Apostle*, in the parish of *Tandridge*,

ANSCOMB
against
STEDDALL
AND OTHERS.

all manner of tithes, duties, oblations, obventions, and emoluments thentofore belonging to the late dissolved priory and convent of the house and churches of *Saint James the Apostle*, in *Tandridge*, in the county of *Surry*, arising, &c. out of the lands and tenements lying in *the Weald* or south part of the parish of *Tandridge*, that is to say, from *Gay Mead* southward; that he was also, during the said time, proprietor or farmer of a portion of tithes, containing all manner of tithes and other duties arising out of the places aforesaid; that the said *D. Maynard* died on the ninth of *October* 1709, having made his will; and that the executor thereto renounced the same; and that administration with the will annexed was duly granted to the plaintiff, whereby he became entitled to the said tithes, and to all arrears thereof, due in *D. Maynard's* life-time, and since his death; that the defendant, during the last four years of the life of *D. Maynard*, and since his death, had held and occupied meadow, pasture, and wood ground in the said weald, and had several titheable matters thereon, but had paid no tithes, or made any satisfaction for the same. The bill therefore prayed a discovery of the lands, and of the quantities, qualities, and values of his tithes.

The defendant said, that for six years past he had occupied *Tandridge Mead* and *Hoary Mead*, and had yearly, during that time, about five loads of hay from off the said two meads, which was worth twenty shillings a load; that he had also occupied *Black Grove Coppice*, which he cut in the year 1710; that the tithes thereof were worth thirty shillings for the faggots, and ten shillings for the poles; that the said coppice ground lies within *the Weald of Surry*; and therefore he insisted, that it was tithe free. He also said, that he believed his landlord apprehended that *Tandridge Mead* and *Hoary Mead* were also exempt from the payment of tithes, for that he had let him the same tithe free; and that he had never paid any tithes for the same, nor had ever heard that *Maynard* had received any tithes for the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon opening the bill, and reading an affidavit of service of the *subpœna* on the defendant to hear judgment; and also his answer; and a lease of the tithes granted to *Maynard*, and the letters of administration to the plaintiff; and no counsel appearing for the defendant;

IT IS ORDERED BY THE COURT, that the defendant shall satisfy and pay to the plaintiff tithes in kind for the several titheable matters had and occupied by him within the said *Weald* or south part of *Tandridge* for the time demanded by the bill. And it is referred to the deputy remembrancer to take the account, unless cause be shewn to the contrary; the defendant first paying five pounds costs for this day's attendance.

Upon

Upon reading the above order, and no counsel attending for the defendant, it is ordered, on the twenty-fifth of *February* 1719, by the Court, that the said order be, and the same is hereby made absolute; and on the sixteenth of *May* 1720, upon reading the report of the ninth instant, it is ordered, that the same be confirmed with costs.

ANSCOME
against
STEDDALL
AND OTHERS.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

AWBREY, Bart. against St. JOHN.

HILARY TERM
6 GEO. 1.

Glamorganshire, 11th February 1719.

THE bill stated, that for twelve years past the plaintiff had been farmer or impropiator of the tithes of corn, grain, and hay, yearly arising in the parish of *Penmarke*, in the county of *Glamorgan*, by lease from the dean and chapter of *Gloucester*, and by virtue thereof ought to have had and received the said tithes, or some composition in lieu thereof, as his predecessors had done; that the defendant, for several years past, had held arable, meadow, and pasture grounds therein, and had yearly mowed grafs, and made the same into hay, the tithe whereof was worth two shillings an acre, which the defendant ought to have paid him; but that he had refused so to do, on pretence of some composition or yearly payment in lieu thereof. The plaintiff also stated, that the vicar of the parish held half an acre of pasture land there, on pretence that it was in lieu of all tithe hay arising therein; but that the said vicar is only entitled to vicarial tithes, and never had any right or title to the tithe of hay, or to any thing in lieu thereof; and that admitting he holds the said half an acre of pasture lands, in lieu of tithe hay, yet that cannot defeat the plaintiff of his right to tithe hay under his lease, nor can the defendant assign any good title to hold his lands exempted from payment of tithe hay in kind, or that the same is covered by any *modus* or customary payment, or that he hath, in any way whatever, paid the same. The bill therefore prayed, that he may discover his title and exemption, and account for the value of his tithe hay for the said twelve years so demanded by the bill.

The impropiator of the parish of *Penmarke*, in *Glamorganshire*, is not entitled to the tithes of hay arising in the said parish.

The defendant said, that he did not know that the plaintiff was farmer, impropiator, or owner of the tithes of corn, grain, and hay, yearly arising in the said parish, as stated in the bill, under the said lease; and he denied, that the dean and chapter are impropiators of the tithes of the hay in the said parish, and in the titheable places thereof. He said, that by some ancient endowment or prescription, the vicars of the said parish have, from time immemorial, collected or com-

AUBREY
against
ST. JOHN.

pounded for the same, or have received a certain *modus* or sum in lieu thereof. He also said, that the plaintiff had not any right to the tithe of hay, for that he the defendant, and his ancestors, for about forty-nine years last past, had yearly paid to the vicar of the said parish, the respective sums of fifty shillings and ten shillings, by way of *modus*, in full discharge and satisfaction of all tithe hay and agistments whatsoever for his and their lands, meadows, and pastures therein; that the vicar doth yearly receive satisfaction by way of *modus*, from other the inhabitants of the said parish, for their tithe hay yearly; and that neither the plaintiff, nor any of his ancestors, for seventy years past, had claimed or demanded any tithe hay in kind, or any *modus* or composition from the defendant, or from any other inhabitant therein for the same. He denied, that the vicar holds half an acre of pasture land in the said parish, in lieu of all tithe hay, and averred, that he had never paid tithe hay in kind to any person whatsoever. By his further answer he said, that for thirteen years last past, he had mowed several acres of grass, the tithe whereof, one acre with another yearly, was worth one shilling and twopence, and he insisted on the said composition, but said, that he was ignorant by whom it had been made, and that the present vicar, and his predecessors, had received from him and his ancestor the said yearly sums in full discharge of tithe hay.

The plaintiff amended his bill, and made the vicar a party defendant, and charged, that the vicar pretended that the said vicarage was endowed with tithe hay, especially with that which grows on the defendant *St. John's* lands, and had yearly received the said sums of fifty shillings and ten shillings, in lieu of tithe hay; but he insisted that the said sums, so received, were only in lieu of vicarial tithes, and that he had never any claim to the tithe of hay, or to any thing in lieu, nor can he, the defendant, set forth by what right he is entitled to the same. The amended bill therefore prayed a discovery of his title, &c.

The defendant said, that for twelve years past, he had been vicar of the said parish, and as such had received such compositions yearly from the inhabitants therein in lieu of his vicarial dues, but is not certain whether the vicarage is endowed with the tithe of hay; but that if it be so endowed, he had been greatly injured in having the same detained from him, for that he had never received tithe hay in kind, and that if it be found due to him, he hoped the Court would preserve his interest. He confessed, that he had received about fifty shillings a-year of the other defendant, but denied, that any part of it was received in lieu of tithe hay; and said, that if it appeared that the tithe of hay belonged to him, the several sums he received from his parishioners had not been received in the nature of a *modus*, for that his predecessors, when they gathered in their small tithes in kind, had never received any thing for tithe hay. He denied, that he had ever given to

any parishioner any receipt for tithe hay, or that he ever meant so to do, unless they thought fit to agree with him for the same; and he insisted on his right, if at any time hereafter any right to tithe hay, or to any *modus* in lieu thereof, should appear to be due to him.

The plaintiff replied to both answers; the defendants rejoined; and divers witnesses were examined on the part of the plaintiff and the defendant *St. John*; and upon reading the lease made by the dean and chapter of *Gloucester* to the plaintiff, dated the fourth of *December* 1717; the defendants second answer; and the depositions of several witnesses on the part of the defendant *St. John*; and on hearing what was insisted on by the plaintiff's counsel;

THE COURT was not satisfied, by the proofs in the cause, that the impropiators or owners of the tithes of the parish of *Penmarke* have ever had or received the tithes of hay arising within the said parish, and therefore did not see cause to relieve the plaintiff upon the matters suggested in his bill.

IT IS THEREFORE ORDERED AND ADJUDGED BY THE COURT, that the bill be absolutely dismissed out of this Court, with costs, to be taxed for the defendant *St. John*, by the deputy remembrancer of this Court.

THO. BURY.
RO. PRICE.
J. MONTAGUE.

COLES *against* FRAPWELL.

Somersetshire, 11th February 1719.

HILARY TERM
6. GEO. 1.

THE bill stated, that *J. Loadington* and *W. Grubb*, being seised in fee of all the tithes arising, &c. within the hamlet of *Hassage*, in the parish of *Wellon*, in the county of *Somerset*, and the titheable places thereof, did, by indentures of lease and release, dated the third and fourth of *July* 1700, for the considerations therein mentioned, grant and convey the said tithes to the plaintiff and his heirs for ever; that by virtue thereof the plaintiff had ever since been well entitled to all the said tithes arising within the said hamlet, and the titheable places thereof, and ought to have received of the occupiers of lands there, all tithes of corn and grain, French grafs, cinquefoil, clover, and hay arising out of the ancient meadows, or some composition in lieu thereof; that for sixteen years past, the defendant had held and occupied several acres of arable and inclosed grounds therein, from whence he had reaped and mowed cinquefoil, clover, and French grafs, and made the same into hay, or had thrashed the same out for seed, the tithe whereof

The impropiator of the parish of *Wellon*, in *Somersetshire*, is entitled to the tithes of all hay, cinquefoil, clover, and French grafs, arising in the hamlet of *Hassage*.

COLES
against
RAYWELL.

was of great value, and was constantly paid to the former impropriators, but that the defendant had neglected to pay the same. The bill therefore prayed a discovery of the said tithes and an account for the same.

The defendant admitted, that for sixteen years past, he had occupied several acres of land and inclosed grounds, which were formerly arable lands lying in *Hassage*, whereupon he had sowed and mowed considerable quantities of cinquefoil, clover, and French grass, which were made into hay, or thrashed out for seed; but he denied, that any tithes in kind were ever paid to the former impropriators for any cinquefoil, clover, or French grass; and, confessing that he had not set out any tithe during the said time, insisted on a *modus* of sixpence, payable in lieu of the said tithes arising within the said hamlet.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and upon reading several depositions; and on debate had of the matters in question;

IT IS ORDERED BY THE COURT, that it be referred to the deputy remembrancer to take an account of what is due from the defendant to the plaintiff, for the tithes of all hay, cinquefoil, clover, and French grass during the time demanded by the bill.

In pursuance of the above order the deputy made his report, dated the fifteenth of *December* last, and upon reading the said decree and report, it is, on the twenty-sixth of *January* 1720, ordered by the Court, that the report be ratified and confirmed, and that the said defendant do forthwith pay to the plaintiff nine pounds, four shillings, and sixpence, so reported due for his tithes, together with his costs, to be taxed by the deputy remembrancer.

THO. BURY.
JAS. MONTAGUE,
RO. PRICE.
F. PAGE.

HILARY TERM ROWE against THE BISHOP OF EXETER; et à Contra.
6. GEO. 1.

Devonshire, 22d February 1719.

The landholders
in the parish of
Stebrook, in *Devonshire*, pay cer-
tain *modus* to the
rector in lieu of
tithes.

b. C. Bunb 57.

THE bill stated, that the plaintiffs were owners, occupiers, tenants, and landholders of divers messuages, lands, gardens, and orchards, in the parish of *Stebrook*, in the county of *Devon*; that the plaintiff *Rowe* occupied a messuage, several gardens, orchards, and about eighty acres of land meadow and pasture; that the other two plaintiffs occupied the like; that there were, and time out of mind had been, divers *modus*es, or perpetual customary

customary sums payable, by the occupiers of lands in the said parish, to the rector in lieu of tithes in kind for the matters following, viz. for every cow having a calf within the said parish seventeenpence, for and in lieu of tithe of the milk and calf of such cow; for every milch cow milked within the said parish, without a calf, elevenpence, for the tithe of the milk of such cow; for every heifer the first year she hath a calf within the said parish, thirteenpence, for and in lieu of the tithe of the milk and calf of such heifer; which said several and respective *modus*es were, by the custom of the parish, due and payable at *Michaelmas* every year; for every hogshead of cyder made within the said parish of apples which grew and were gathered in the said parish, eightpence, payable at *Easter*, by the owners and proprietors of the apples, for and in lieu of the tithes of such apples, and after that rate in proportion for a less quantity than a hogshead; for the tithes of all hoard apples of every tenement gathered within the said parish, and not made into cyder, one penny, payable also at *Easter* by the owner of such apples; for the tithe of all firewood grown, cut, and burnt within the said parish, on the farm on which the same grew, in every year, one penny, called a *bearth penny*, payable also at *Easter*, by the tenant or occupier of the lands whereon such wood grew; for the tithe of all fruit, herbs, roots, and other things arising in gardens within the said parish in every year, one penny for every garden, commonly called a *garden penny*, payable also at *Easter* by the tenants or occupiers of such gardens; for the tithe of every colt foaled within the said parish, one penny, payable also at *Easter*, by the owner or possessor of such foal so foaled; and divers other *modus*es or customary payments within the said parish, which the rectors accepted, and ought to accept for other titheable matters, in lieu of the tithes thereof; that all the said *modus*es, &c. had been paid by the said plaintiffs, in lieu of the said tithes, to *Michaelmas* 1716, and that they were willing and ready to pay the same to the defendant, who was then rector, but that he insisted on being paid tithes in kind for the said years 1716 and 1717, whereas the plaintiffs had been under general compositions for the ease of the defendant, to pay yearly to him for all their tithes and customary payments within the said parish, home to *Michaelmas* then last past, but without prejudice to the said *modus*es, or any way to extinguish the same; that the defendant insisted on being paid tithes in kind, and refused to accept the yearly compositions, according to his agreement, though he never gave the plaintiffs notice that he would break the same, and refused to allow them any customary payments in lieu, or to discover the same; that the plaintiffs were in great danger of losing the evidence of the said *modus*es or customary payments, their witnesses who could prove the same being very aged and like to die. The bill therefore prayed a full discovery of the matters
aforesaid,

Rowe
against
THE BISHOP OF
EXETER;
et c. Contra.

Rowe
against
THE BISHOP OF
EXETER;
et c. Contra.

aforesaid, and that the plaintiff's ancient witnesses might be examined, and their testimony preserved, and the said *modus* established by the decree of the Court.

The defendant answered, and said, that he believed the plaintiffs were occupiers of the several messuages, &c. as stated in the bill, and in the said years had several milch cows, calves, &c. but he denied the said ancient *modus* or customary payments; and said, that he had been informed that some of the late rectors had made general compositions with the landholders, for several gross sums, in lieu of all their tithes, payable at *Lady Day* and *Michaelmas*, and that his curate finding them under such compositions, had agreed with them to *Michaelmas* 1717, but that he, the defendant, insisted on being paid tithes in kind for everything titheable since *Michaelmas* 1717; and that he had refused to allow of any yearly composition, *modus*, or customary payment, nor could he give notice to the plaintiffs that he would break the said compositions, he never having agreed to accept the same after *Michaelmas* 1717, when he gave proper notice to the plaintiffs that he would take his tithes in kind; and he speaks as to the terriers.

The bishop of *Exeter* filed his cross bill against several of his parishioners stating, that, for two years past, he had been rector of the said parish, and was entitled to all great and small tithes arising therein; that the defendants were occupiers of several messuages, &c. and had several titheable matters arising therein; that he had applied to them, and expected to have received tithes in kind of the several matters from *Michaelmas* 1717, but that they pretended a *modus* or composition for the same. The bishop therefore prayed a discovery of their titheable matters and things, and an account for the same.

The defendants admitted the plaintiff was rector of the said parish, and entitled to great and small tithes, or to some *modus* or other satisfaction for the same, and that from *Michaelmas* 1717, they had been occupiers of divers messuages, &c. and had several titheable matters therein; but they insisted that there was, and time out of mind had been, paid by the owners and tenants of lands in the said parish, to, and accepted by, the rectors of the said parish, for the time being, certain *modus* or perpetual customary payments in lieu of tithes in kind, for the said several kinds and species of the several titheable matters as mentioned in the original bill without interruption (except when the same had been suspended by some composition for the whole tithes in gross, wherein such customary payments were included); and the said defendants set forth the several titheable matters and things they had, and submitted to pay the hearth and garden penny, with the other *modus*.

To which answers in both causes, the plaintiffs replied; the defendants rejoined; and witnesses were examined in both causes.

Rowe
against
THE BISHOP OF
EXETER;
et c. Contra.

The cause came on to be heard the fourth day of *February* instant, and upon reading the several proofs taken in the cause, and two paper books, both containing chiefly an account of the receipt of tithes and *modus*, and other matters relating to the tithes of *Shobrook*; and one of the said books dated 1646, and the other 1656 and 1660; and several receipts relating to the tithes of the said parish, dated 1690, and so on; all which were fully proved in the original cause;

THE COURT was unanimously of opinion, that the several and respective *modus*, for the several and respective things mentioned and insisted on by the plaintiffs in the original bill, and in their answers to the cross bill were fully and well proved, and ought to be confirmed and established by the decree of this Court, but declared, that his lordship might try the said *modus* at law, if he thought fit so to do, and he was to give his answer, whether he would go to a trial at law?

And whereas, by an order of court, dated the tenth of *February* instant, upon the motion of *the Bishop*, it was ordered, that this cause should stand over for his lordship to consider of the said trial.

And these causes now standing in the paper accordingly, his lordship gave his answer, that he submitted to the opinion of the Court, and would not go to a trial at law.

WHEREUPON IT IS ORDERED, ADJUDGED, AND DECREED BY THE COURT, that the several and respective *modus* for the several and respective things mentioned and insisted upon by the plaintiffs in their original bill, and in their answer to the cross bill, be and are hereby confirmed and established by this Court; and that the said cross bill do stand absolutely dismissed out of this Court.

THO. BURY.
RO. PRICE.
F. PAGE.

NICHOLAS against ELLIOT.

Surry, 26th *February*, 1719.

HILARY TERM
6. GEO. I.

THE bill stated, that the plaintiff, for fifteen years past, had been vicar of the parish and parish church of *Shalford*, in the county of *Surry*, with the chapelry of *Bramley*, in the parish aforesaid annexed; that by endowment, or otherwise, he was

The vicar of *Shalford*, in *Surry*, claims the tithes of pease and beans grown in the common fields, Bro. P. C. 31.

S. C. Bunb. 19. S. C. 2. Eq. Abr. 734. S. C. 2. entitled

NICHOLAS
against
ELLIOT.

and states the
manner in which
they were culti-
vated ;

that two decrees,
upon the said sub-
ject, had before
been obtained in
his favour ;

that the defend-
ant Elliot pre-
tended he had a
lease from his
landlord *Austen*,
indemnifying
him against the
payment of such
tithes.

entitled to have and receive all tithes and profits arising therein, and in the titheable places thereof, which consisted of all small tithes, mortuaries, and offerings, and also the tithes of wood, pease, and beans, in the common fields, or closes, or titheable places therein set, drilled, or sown in rows and ranks, and sometimes with carrots between the rows, which are hand weeded or hoed in a garden-like manner ; that the defendant *Elliot* rented and occupied several farms and lands within the said parish, and yearly reared, kept, felled, and cut great quantities of titheable matters, and carried away and converted the same to his own use, without setting out the tithes thereof, or making any satisfaction for the same ; that the said defendant having rented great part of the impropriate tithes with the other defendant *Smitbier*, they had, for several years, forceably taken and carried away great quantities of the tithes of pease and beans that were set and planted in a garden-like manner in the fields, by the inhabitants throughout the division, rented by the said defendant *Elliot*, and which tithes belonged to the plaintiff, but that they had refused to discover the values thereof, or to make the plaintiff satisfaction for the same, pretending, that the plaintiff's right to such tithes is destroyed, because lately there has been no spade used with the plough in turning the ground, though the planted crops, and all other managements are still the same in nature and quality, and as much a garden husbandry, as when the ground was turned with the plough and spade, and though the plaintiff's right hath been affirmed by two decrees, the first against the defendant *Elliot*, in the year 1711 (a), and the second against *Austen* and Others, in the year 1715 (b), from which decree, the said *Austen*, being owner of the said impropriate rectory of *Shalford*, appealed to THE HOUSE OF LORDS, where the same was heard on the twenty-fourth of January 1717, and the said appeal and petition dismissed ; that the defendant *Elliot*, upon the plaintiff demanding of him the tithes of pease and beans, affirmed, that if any tithes were payable for them, it must be by his landlord *Mr. Austen*, he having by lease covenanted to indemnify him for such tithes ; that he had never paid for tithes for the same ever since the decree, and would never come to an account, or pay to the plaintiff any tithe for the herbage for the great number of barren cattle by him kept for several years past, though he yearly bred, reared, bought in, and kept numbers of such cattle, and also fed cattle on turnips, or make the plaintiff any satisfaction for the same. The bill therefore prayed, that the defendant might be ordered to answer the matters aforesaid, and to pay the plaintiff the values of his tithes, and that the plaintiff might have all the penalties and forfeitures due by law for not justly paying the tithes in the bill mentioned.

(a) See vol. 1. page 523.

(b) Ante, page 10.

To which bill the defendants appeared and answered, and admitted that the plaintiff was vicar of the said parish; and they put in the like answer, as they had done to the former suits.

The plaintiff replied, and the defendants rejoined, but the plaintiff did not proceed to examine any witnesses in this cause, in regard there was another cause in this court depending, wherein witnesses were examined on the part of the plaintiff *Smithier* and the said *Nicholas*.

By an order, made the fourth of *November* last, both the said causes were ordered to be heard together, and the depositions, taken in the cause of *Smithier v. Nicholas*, were ordered by consent to be read in this cause; and by a subsequent order, made the twenty-second of *February* instant, all parties were at liberty to prove exhibits *viva voce* at the hearing.

Upon hearing what was alledged by counsel, and reading a release under the hand and seal of the plaintiff *Nicholas* to the defendant *Elliot*, upon the payment of his tithes, therein mentioned, to the plaintiff, dated the eighteenth of *April* 1719; and also an indenture, purporting to be a lease made between *John Austen* and *Robert Elliot*, dated the twelfth of *April* 1690;

IT IS ORDERED BY THE COURT, that the bill, as against the defendant *Elliot*, be and is hereby absolutely dismissed out of this Court with costs, to be taxed for the said defendant by the deputy remembrancer of this court, from the date of the said release given by the plaintiff to the defendant *Elliot*.

NICHOLAS
against
ELLIOT.
The defendants
answer.

The plaintiff replies and relies on the evidence in the cause of *Smithier v. Nicholas*.

Both causes ordered to be heard together.

Present,
BURY, L. C. J.
PRICE, B.

On reading a release from the plaintiff to *Elliot*, and *Austen's* lease to him,

the bill is dismissed as against *Elliot*.

SMITHIER against NICHOLAS and ELLIOT.

Surry, 26th February 1719.

THE bill stated, that *J. Austen*, deceased, being seised in fee, or of some other good estate of inheritance, of the impropriate rectory of *Shalford*, in the county of *Surry*, with the chapelry of *Bramley* annexed, was thereby entitled to all the great tithes arising within the said chapelry and rectory, and in the titheable places thereof; that in the year 1690, he demised to the father of the defendant *Elliot*, the tithes of corn, grain, and hay, and all other tithes belonging to the said rectory, within the south and south-east parts of *Shalford*, to hold for twenty-one years, from *Michaelmas* 1691; that the said *Elliot's* father soon afterwards assigned the said lease to the said *Elliot*, his son; and that he, as lessee of the said rectory and chapelry, was entitled to all the tithes of corn, grain, grass, hay, and to the tithes of pease and beans set, drilled, or sown in rows, and afterwards hand-weeded or hoed in a garden-like manner, prepared with the plough, arising within the north part of the chapelry

HILARY TERM
6. GEO. I.

The plaintiff states, that *Austen* being impropriator of *Shalford*, in *Surry*, demised the tithes of the South and South East parts of the parish to *Elliot*, and that *Elliot* demised the tithes of the North Part of the chapelry to him.

SMITHIER
against
NICHOLAS AND
ELLIOT.

pelry of *Bromley*; that the defendant *Elliot*, in the year 1704, in consideration of one hundred and forty pounds a-year, demised the said tithes, arising in the north part of the said chapelry, to the plaintiff, who continued as tenant thereof till the year 1712; that there had been two different ways of tilling and preparing the lands and grounds within the said rectory and chapelry, whereon pease and beans have been set, drilled, or sown in rows, and which were afterwards hand weeded or hoed in a garden-like manner; one way with the spade, or with the plough and spade, and the other with the plough only, and that the tithes of the pease and beans planted, set, drilled, and sown, on lands prepared with the spade, or with the plough and spade, have been enjoyed by the vicars of the said parish and chapelry as small vicarial tithes; that the tithes of the pease and beans, planted and sown upon lands and grounds prepared with the plough only, and where no spade hath been used, were reputed to belong to the impropiators of the said parish, which manner of tithing was observed in the parish till the year 1711, when the defendant *Nicholas* obtained a decree in this court, whereby the tithes for pease and beans, drilled or set in rows in a garden-like manner, though the lands were prepared with the plough only, were adjudged to belong to him as vicar. The bill therefore prayed that the defendants might be compelled to answer the premises; and that if the court should be of opinion, that such tithes in arrear do belong to the defendant *Nicholas* and should decree the same against the plaintiff, that then the same may be allowed by the defendant *Elliot*, who had received a satisfaction from the plaintiff, as if the plaintiff was entitled to the same by virtue of the agreement made with him.

On reading the
lease made by
Austen to *Elliot*.

To which bill the defendants appeared and answered; the plaintiff replied to the answers; and witnesses were examined on the part of the plaintiff and the defendant *Nicholas*, and upon reading an indenture of lease, made by *J. Austen* to *Robert Elliot*, dated the twelfth of *April* 1690, and hearing what was insisted on by counsel on both sides,

The bill is dis-
missed with costs.

IT IS ORDERED BY THE COURT, that the bill be, and the same is hereby dismissed out of this Court against the defendants, with costs, to be taxed for the said defendants, by the deputy remembrancer, to whom it is referred to tax the same.

THO. BURY.
RO. PRICE.

DODSON *against* OLIVER.*Suffex*, 16th May 1720.EASTER TERM,
6. GEO. I.

THE plaintiff, as rector of *Husterpoint*, in the county of *Suffex*, filed his bill to have a discovery, account, and payment of and for the tithes of a water corn-mill, and for the great and small tithes of the farm and lands occupied by the defendant, according to the following rates, *viz.* every tenth toll dish, or pint of corn received by the defendant, for corn ground at the said mill; the tithes in kind of corn, grain, hay, milk, calves; and *Easter* offerings.

kind of hay, corn, calves, milk; and *Easter* offerings.

The defendant admitted, that he was occupier of the mill and farm in the bill mentioned, but insisted, that the mill, having been built beyond memory, was an ancient mill, and ought not to pay tithes; and that, for the other titheable matters, the plaintiff had, for the time demanded by the bill, received the tithes of his corn, grain, and hay, in kind; that he had, according to agreement, paid him tithes for the calves he had; and that as to the tithes of his milk, he had set out the tenth part in such manner as is stated in the answer (a). He confessed, that he had five persons in his family above sixteen years of age, but said, that he knew not whether any *Easter* offerings were due for them.

The plaintiff, by a special replication to the defendant's answer, admitted that the defendant had paid the great tithes of corn, grain, and hay, and therefore waived his right thereto, and discharged the defendant from the examination of witnesses concerning the same. The cause being at issue on both sides, and witnesses having been examined for both parties, it came on to be heard on the twenty-third day of *February* last, when, upon reading several depositions in the cause, the Court directed it for to stand over further hearing, and it came on to be further heard this day, when the plaintiff relinquished his demands of tithes of calves.

THE COURT, after reading several proofs, ordered the defendant to account for the tithes in kind of his milk, for the time demanded by the bill, unless he could prove before the deputy the time when the plaintiff sent a note to him in writing, signifying therein, that, for the future he, the plaintiff, expected the defendant to set out the tithes of his milk upon every tenth meal, and that the plaintiff would fetch it away; and, in such case, the deputy was ordered to take the account, only from the time of the delivery of the said note. The de-

The rector of *Husterpoint*, in *Suffex*, claims every tenth toll dish, or pint of corn, taken by the owner of a water-corn mill, in lieu of the tithes thereof; and the tithes in *S. C. Bunb. 73.*

The defendant says, that the mill is an ancient mill and tithe free; that the plaintiff had received the tithes of hay and corn in kind; that he had compounded for his calves; that he had set out his tithe-milk as alledged; and that no offerings were due.

The plaintiff waives his demand, as to hay, corn, and calves.

The cause directed to stand over for further hearing.

The tithes of milk decreed to be paid in kind, unless the defendant could prove the plaintiff's consent to take every tenth meal, &c. See *Bunb. 73.*

(a) See ante, page 46. and 124.

defendant

DODSON
against
OLIVER.
The *Easter* of-
ferings decreed.

defendant was also decreed to account for the *Easter* offerings for himself and family, after the rate of twopence a-head. But as to the demand for the tithes of corn and grain ground at the corn mill, the cause was ordered to stand over for counsel on both sides to be heard on the point (a), and for the Court to give their final opinion therein.

The Court di-
vided in opinion
as to the tithes
of the corn-mill;
and no applica-
tion being made
for rehearing;

The cause accordingly stood in the paper the fourth of *May* 1721, and after hearing counsel on both sides, the Court was divided in their opinions, which they gave *seriatim* (b), touching the tithes of the said mill, and neither party afterwards made any application to the chancellor for a rehearing before him and the barons, but on the twenty-ninth day of *November* 1721, the plaintiff, by his counsel, consenting in court to waive his further prosecution for the tithes of the said mill,

an account is or-
dered to be ta-
ken of the tithes
of milk and
Easter offerings.

IT WAS ORDERED, that the defendant should shew cause why the deputy remembrancer should not be at liberty to proceed to take and state an account of the tithes of milk and *Easter* offerings, which said order was made absolute on the ninth of *December* following.

In obedience to the said order the deputy made his report, dated the twenty-second day of *November* last, and upon reading the said orders and report, and the plaintiff's counsel praying that the same might be confirmed with costs, and no exceptions having been filed thereto, and the defendant's counsel praying that the said costs might be spared, forasmuch as he had been at great expences in defending his right against plaintiff's demand of the tithes of the said mill,

It is ordered, on the tenth of *December* 1722, that the report be ratified and confirmed, and that the defendant do forthwith pay to the plaintiff three pounds, eight shillings, and sixpence, for his tithes of milk and *Easter* offerings, so reported due, with his costs, to be taxed for the tithes of milk and *Easter* offerings; and on the twenty-fourth of *February* 1723, the final report was made and confirmed, with costs, and the original decrees ordered to be enrolled.

J. A. MONTAGUE.
RO. PRICE.
F. PAGE.
GILBERT.

(a) The question was, whether tithes of an ancient corn-mill, that had never paid tithes, were payable or due of common right? S. C. Bunb. 73.

(b) The following opinions are taken out of the exchequer chamber minute book, viz.

MR. BARON PAGE. No tithes due for an ancient mill, for which no tithes have been paid; tithe of a mill is a per-

sonal tithe and the defendant ought not to account.

MR. BARON MONTAGUE. That the defendant ought to account for the tithe mill by paying the tenth toll dish.

MR. BARON PRICE. The same opinion.

L. C. BARON BURY. Of opinion the defendant ought not to account.

The Court divided.

JORDEN

JORDEN *against* JENKINS.*Shropshire, 23d May 1720.*EASTER TERM,
6. GEO. I.

THE bill stated, that the plaintiff was rector of the parish church of *Little Wenlock*, in the county of *Salop*, and by his institution therein, was legally entitled to all and singular the tithes, both great and small, and particularly to the tithes of all wood cut or fallen within the said parish; that *Sir William Forrester*, for several years past, had been seised of several parcels of coppice grounds within the said parish, the tithes whereof on felling of the same, were always paid to the rector there; that the defendant *Colley*, having bought or made some contract with the said *Sir William Forrester* for the coppice woods and other wood growing in a coppice called *Holbrook Coppice*, containing about one hundred acres, did, in the year 1716, fell and cut down the same, and did cut up and cord the wood so felled, and convert the same into charcoal, without giving the plaintiff any satisfaction for the same; he pretending that there is some *modus* payable in lieu of the tithes thereof. The bill therefore prayed a discovery of the said tithes, and an account and satisfaction for the same.

The rector of *Little Wenlock*, in *Salop*, is entitled to the tithe of the wood felled in *Holbrook Coppice*, and sold to be made into charcoal, for the use of *Leighton Furnace*.

The defendant *Colley* said, that he believed the plaintiff was rector of the said parish, and that he was entitled to all tithes, both great and small, except to the tithes of wood; for that he remembered, when, about twenty-one years before, the said wood had been cut down for the use of *Leighton Furnace*, no tithes had, to his knowledge, ever been paid to or demanded by the then rector, or any composition made with him for the same.

The defendants *Jenkins* and *Boycott* also admitted, that the plaintiff was rector as aforesaid, and entitled to the great and small tithes arising in the parish; and said, that *Sir William Forrester* was seised of several woods therein, but whether the plaintiff, as rector, is entitled to the tithe of wood, they knew not, for they had never heard that any tithes had been ever paid or demanded for the same; that they were jointly concerned with *Lord Torrington* in *Leighton Furnace*, and had for several years employed the defendant *Colley* to manage the said furnace, and to buy cordwood for the same; and they said, they believed that he had agreed with *Sir William Forrester* for the cordwood in *Holbrook Coppice*, but that what particular cords had been cut down, or the values of the same, they knew not, but imagined that the defendant *Colley* had, to the best of his remembrance, set forth the same.

JORDEN
against
JENKINS.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs, and on full debate of the matter,

IT IS ORDERED BY THE COURT, that the defendants *Jenkins* and *Boycott* do forthwith account before the deputy remembrancer for all the tithe of the underwood fallen in *Holbrook Coppice*, and all other places within the said parish, according to the time demanded by the bill; and that the bill be dismissed, as against the defendant *Colley*, without costs.

In pursuance of which order the deputy made his report, dated the sixteenth of *November* instant and upon reading the decree and report, without exceptions, it is ordered, on the twenty-fourth of *November* 1720, by the Court, that the said report be ratified and confirmed, with costs, to be taxed, and that the defendants do forthwith pay to the plaintiff twenty pounds, so reported due for the tithe of underwood of the said coppice.

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

TRIN. TERM,
6. GEO. I.

BLISS against CHANDLER.

Kent, 15th July 1720.

The lessee of the tithes of *Maidstone*, including the towns of *Stone*, *Wick*, *Westree*, and *Loddington*, in *Kent*, claims the tithes of hops in kind.

S.C.8 Vin.Abr.
585, notis.

THE bill stated, that, for four years past, the plaintiff had been lessee of the tithes of corn, grain, and hops arising and belonging to the rectory or parsonage of *Maidstone*, in the county of *Kent*; of the tithes of hay and hops in the borough of *Stone*; of corn, grain, and hops in the borough of *Wick*, parcel of the said rectory; of the tithes of corn, grain, and hops in *Loddington*; and of the tithes of corn, grain, hay, hops, and small tithes in the borough of *Westree*, parcels of the said rectory: that the defendant, in the year 1719, occupied, in the said rectory, seven acres of hop-ground, lying within the boroughs of *Stone*, *Wick*, or *Westree*, and had a quantity of hops growing thereon, the tithes whereof the plaintiff was entitled to receive; that, before the time of picking the said hops, he had given notice to the defendant that he would take the tithes of the said hops in kind; that the defendant agreed thereto, and promised to set out the full tenth part of the said hops justly in kind; that at the beginning of the picking, for about six days, he did so set out the tithes thereof by the tenth bushel, after they were picked from the bine; that he, the plaintiff, by his servant, took and carried the said tithes away, and expected that the defendant would have continued to set out the tithes in

the same method, when he had picked the remainder ; that the defendant forbore picking for some time, and sent the plaintiff word that he would not set out the tithes of his hops by measure any longer, but would lay down on the ground every tenth pole of hops for the plaintiff to pick and carry away ; but that, the said method being unusual and unequal, he had refused to agree thereto, and had informed the defendant of his refusal ; that nevertheless the defendant picked the remainder of his hops, and took the same away, without paying his tithes in kind, or making any satisfaction for the same. The bill therefore prayed, that the defendant might pay his tithe hops in kind, and answer the matters complained of in the bill.

BLISS
against
CHANDLER.

The defendant said, that he believed the plaintiff was lessee of the tithes, and entitled to receive the tithes of hops in the boroughs of *Stone, Week, and Westree*, parcel of the rectory of *Maidstone*, or some composition in lieu thereof. He admitted, that in the year, ending at *Michaelmas 1719*, he had seven acres of hop-grounds lying in the said boroughs, and that he had great quantities of hops therein ; that the plaintiff did, some short time before he began to pick his hops, put up a writing signifying, that he would receive the tithes of hops in the said year in kind, unless the planters would make a new composition with him ; but he denied that he had any personal notice ; and said, that the plaintiff had refused to take the old composition of twelve shillings an acre, and that he had offered to give him fifteen shillings an acre, which the plaintiff had also refused to receive. He also admitted, that at the beginning of the picking, he did, for a few days, pick here and there a pole that was forwarder than the rest ; that the hops so picked were measured and set out for the plaintiff by every tenth bushel, which tithes the plaintiff had carried away ; and that he had sent word to the plaintiff, that he would give him notice when he picked the remainder. He said, that he understood the tenth part of the bines, as well as of the hops, belonged to the plaintiff, and that therefore he designed to set out the tithes by the pole, and not by the bushel, that the plaintiff might provide persons to pick the same ; that on the seventeenth of *August*, he began to pick the residue of his said hops ; and that his servants, as they went on, set out equally every tenth pole for the plaintiff's tithes ; but that the plaintiff's servants had demanded every tenth bushel for the tithes, and refused to accept the tenth pole, or to pick or take away the tithes of the hops so set out ; but had left the same unstripped and unpicked on the defendant's ground ; and that he, the defendant, had stripped the bines from the poles, and stacked the poles, and left the bines on the ground for the plaintiff's use. The defendant set forth the quantities and values of the hops he had so picked, and denied, that he had agreed to set out

The defendant says, that he paid the tithes of the early hops by the bushel after they were picked, and the remainder by stripping the bines from every tenth pole or hill, and leaving them on the ground for the plaintiff to pick ; and that this mode of tithing is as fair and equal as tithing them by the bushel.

BLISS
against
CHANDLER.

the tithes of all his hops by measure ; or that there was, to his knowledge, any customary way of tithing hops in the said parish, or that the tithe of hops had ever before been demanded in kind, but said, that some composition had constantly been paid in lieu thereof, and that the setting out the tenth pole or hill is as equal a way of tithing, as setting them out, when picked, by the tenth bushel.

The defendant
ordered to ac-
count *vis*, &c.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon opening the bill and reading an order whereby the said defendant undertook to appear *gratis* at the hearing, and the answer, and no counsel attending for the defendant ;

IT IS ORDERED BY THE COURT, that the defendant do account with the plaintiff for the value of the tithes of the hops in question ; and it is referred to the deputy remembrancer to take the said account, unless cause be shewn to the contrary; the said defendant first paying five pounds costs before he be heard.

The defendant
appears and the
evidence is read.

This cause now, on the tenth of *November* 1720, standing in the paper, and counsel appearing for the defendant, a decree made in this court on the ninth of *June*, in the third of *James the Second*, in the case of *Chitty v. Reeve* (a); another decree, dated the eleventh of *May* 1704, in the case of *Gee v. Perch* (b); another decree, dated the seventeenth of *November* 1698, in the case of *Gee v. Perch* (c), all relating to the tithes of hops, were read ; together with all the depositions taken on the defendant's part, and the matter fully debated, when

The tithes of
hops ordered to
be paid by every
tenth bushel of
the whole after
they are picked.

THE COURT declared that hops are not titheable until they are picked, and that the tithes thereof ought to be paid in kind by the bushel, *viz.* every tenth bushel of the whole after picking ; and

IT IS THEREUPON ORDERED, that the defendant shall account for and pay to the plaintiff the full value of the tithes or tenth part of the hops, which the defendant had growing within the said parish, during the time in the bill mentioned, after the rate and manner aforesaid ; and it is referred to the deputy remembrancer to take the account.

In pursuance of the above order the deputy remembrancer made his report the eleventh instant ; and upon reading the same, no exceptions being filed, it was, on the twenty-second of *February* 1720, ordered, that the report be confirmed with costs, to be taxed, and that the defendant do pay to the plaintiff twenty pounds, nine shillings, and sixpence, so reported due for his tithes hops.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

(a) See vol. i. page 257. (b) See vol. i. page 386. (c) See vol. i. page 416

JONES *against* CAWTHORNE,
and

DENSTON *against* JONES.

Cambridgeshire, 15th July 1720.

TRIN. TERM,
6. GEO. I.

THE bill stated, that the plaintiff, in the year 1714, was legally instituted and inducted into the parish church of *Downham*, in the *Ile of Ely*, as rector there, and is thereby entitled to receive the great and small tithes arising therein, and also all *Easter* offerings and other duties according to the custom of the said parish; that the defendants, from the twenty-fourth of *October* 1716, held and enjoyed, in the said parish, divers lands and tenements, on which they respectively had great numbers of milch cows, from which they had milk, but the tithes of which they neglected to set out, and had refused to make any satisfaction for the same, on a pretence, that there are certain *modus*es payable in lieu of the tithes of cows and milk, although they knew that it had been determined by the Court, that there are no such *modus*es as they pretend, and that the tithes of milk ought to be set forth in kind. The bill therefore prayed a discovery of the lands which the defendants occupied in the said parish; the number of milch cows they had kept; and the quantities of milk such cows had given.

The cow-keepers in the parish of *Downham*, in the *Ile of Ely*, pay to the rector 2d a year, for ever new milch cow; 1d. a-year for every old milch cow, at *Easter*, and the whole morning's milk of all the cows on *Whitsunday*; the owners to milk the cows and carry the milk to the parsonage house, in lieu of the tithe milk.

The defendants *Cawthorne*, *Leaford*, *South*, and *Langmin* said, that they believed the plaintiff was rector of the said parish, and entitled to all tithes, or to some *modus* in lieu thereof; and they set forth respectively the number of milch cows which each of them had, the quantity of milk the cows had given, and the value thereof; but they insisted, that within the said parish of *Downham*, and the titheable places thereof, there was and is an ancient *modus*, payable in lieu of tithe milk; that is to say, for every new milch cow, the yearly sum of twopence; for every old milch cow, the yearly sum of three halfpence; and the whole morning's milk on every *Whitsun Monday*, to be milked by the owners of all milch cows within the said parish, and to be, upon that morning, carried home to the parsonage house, by the said owners, their servants, or agents, which said sums of twopence, for a new milch cow, and three halfpence for an old milch cow, are due and payable to the rector of *Downham*, for the time being, at *Easter* yearly, in full satisfaction of all tithe milk yearly arising within the said parish and the titheable places thereof; and that the said plaintiff had accepted thereof.

The defendants *Denston* and *Cole* set forth the number of their milch cows; the quantities of milk they had produced, and the values of the tithes thereof; and insisted on the *modus* in lieu of the tithe of the said milk.

L 3

To

JONES
against
CAWTHORNE,
AND
DENSTON
against
JONES.

To the answers of the defendants *Cawthorne* and others, the plaintiff filed a special replication, and thereby waived his demand of tithes of *the Park* and *the Frith*, for which he admitted he had received satisfaction since the bill was filed.

The defendants rejoined ; and filed their cross bill on behalf of themselves and others, the landholders and inhabitants of the said parish, to establish the said *modus* in lieu of the tithes of milk : they also stated, that, time out of mind, there had been due and payable to the rector of the said parish, for the time being, for every foal not sold within the year, the yearly sum of one penny, and no more ; and if sold within the year, the tenth penny for which such foal was sold ; and said, that they had always been willing to pay the said several sums, and to deliver the said meal of milk to the said *Jones*, according to the *modus*, and that they had tendered the same to him ; and they insisted, that the said *modus*, and no other, are due. They admitted, that a decree might have been obtained by *Jones* against the defendants, for the tithes of milk in kind, in a former cause in this court (a) ; but that the same was obtained for want of duly insisting upon the *modus*, and for no other cause. They therefore prayed, that the rector may be decreed to accept of the said *modus*, in lieu of the said tithes ; that the same may be established by the decree of this Court ; that they may be at liberty to perpetuate the testimony of their aged and infirm witnesses ; and that the rector may produce his predecessors' books in relation to the said *modus*.

The rector answered the cross bill ; and as to the *modus* for foals, said, that they had appeared doubtful to the Court, on the hearing of the former cause ; and that a trial at law had been offered to him, but which he had declined merely because he was not willing to put himself and adversaries to the expences of a law suit for one single *modus* ; but that the Court were so clearly of opinion in his favour, as to all the other matters, that the said cross bill was dismissed without prejudice as to the *modus* of foals ; and he insisted that he had obtained a decree for the tithes of milk in kind, for that the said dismissal was absolute, without any saving clause to their right respecting milk ; and he insisted that the morning milk on *Whitsun Monday*, which is stated in the bill to be part of the *modus*, had not been brought to the parsonage house a considerable time, but on what account or at whose request he knew not.

The plaintiffs replied ; and issue was joined ; and divers witnesses were examined on both sides ; and upon reading the proofs in these and in the former causes ;

IT WAS ORDERED AND ADJUDGED BY THE COURT, that the original bill, for the tithes of milk, be dismissed without prejudice

a) See ante, page 97.

to the plaintiff's claim of tithes in kind of the lands in the said parish of *Downham*, called *the Park* and *the Frith*; AND THAT the *modus*, set forth by the plaintiffs in the *cross bill*, be, and are hereby established, as to all the lands in the said parish of *Downham*, and the titheable places thereof, except as to the said lands called *the Park* and *the Frith*.

JONES
against
CAWTHORNE,
AND
DENSTON
against
JONES.

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

LOVEDAY against MOORER.
Buckinghamshire, 13th July 1720.

TRIN. TERM,
6. GEO. I.

THE bill stated, that the plaintiff had been for four years past, and still was rector of the rectory and parish of *Hedder*, in the county of *Bucks*, and entitled to all tithes both great and small arising therein, and in the titheable places thereof; to *Easter* offerings; and to all other dues and duties belonging to the said rectory; that the defendant, being an inhabitant therein, held and enjoyed lands, gardens, and orchards, and had grass, turnips, carrots, apples, pears, plumbs, and other titheable matters, which he had cut and carried away without setting out the tithes thereof; that he kept several cows, which had yielded milk, and calves; that he had swine which had pigs; and several geese, hens, turkeys, and other poultry, which had young; that he had also within the said parish water corn-mills, whereat he ground corn, for which he received toll, or other emolument for the grinding of corn therein, but had refused to set forth the tenth toll dish, or to make any other satisfaction for the tithes arising from the grinding of such corn; that the said defendant with his wife and children had during the said time resided in the said parish, and had thereby become liable to pay *Easter* offerings to the plaintiff, but which he had also refused to do. The bill therefore prayed a discovery and relief in the premises.

The rector of *Hedder*, in *Buckinghamshire*, claims the tithes of the defendant's farm in kind.

The defendant said, that he believed the plaintiff was rector of the parish; that he was entitled to all great and small tithes arising therein, and to *Easter* offerings; and he set forth the lands, &c. which he held therein, and the tithes of the matters he had had thereon; and that he had refused to account with the plaintiff, or to pay him the tithes in kind for all or any of the matters and things aforesaid, because that, time immemorial, a *modus* or composition of twenty-four shillings a-year had been paid by the occupiers or owners of the said messuage, mills, lands, and premises to the plaintiff's predecessors, and to the plaintiff himself, until two years last past; and that the

The defendant says there is a *modus* of 24s. a-year, payable in lieu of the tithes of the said farm.

LOVEDAY
against
MOORE.

same had been accepted by him for all tithes arising therefrom, as well as for *Easter* offerings; and he insisted upon the same, in bar of tithes in kind; but he admitted, that he was indebted for the said *modus* for two years, which he said he had tendered, and that he was still ready to pay the same to the plaintiff.

The evidence
read.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs taken in the cause;

The Court de-
clare the *modus*
to be rank;

THE COURT declared, that the *modus*, insisted on by the defendant in his answer, was too great a *modus* for the said premises (a), and thereupon ordered the defendant to account with and satisfy the plaintiff the values of his tithes in kind, and for *Easter* offerings; and that the deputy remembrancer do take the account.

and order the
defendant to ac-
count.

Pursuant to which order the deputy made his report, dated the fourth of *November* instant, and upon reading the same, it was ratified and confirmed, and ordered, on the seventeenth of *November* 1720, that the defendant do forthwith pay to the plaintiff sixteen pounds, fourteen shillings, and sixpence, so reported due for his said tithes.

THO. BURY.
RO. PRICE.
F. PAGE.

(a) But see the case of *Atkins v. Lord Willoughby de Broke*, Anstruther's Reports, 402, that the Court will not

decree against a farm *modus*, on account of its rankness.—See this case post. Hilary Term, 34. Geo. 3.

TRIN. TERM,
6. GEO. 1.

HELLIER against COOPER.

Southampton, 13th July 1720.

The impropria-
tor of *Husborne*
Tarrant, in
Hampshire, is on-
ly entitled to the
tithes of corn,
lamb, and wool;
and the vicar to
the other tithes.

THE bill stated, that *J. Forster*, being impropiator of the rectory of *Husborne Tarrant* and *Idrop*, in the county of *Hants*, by indenture dated the first of *January* 1708, in consideration of two hundred pounds a-year, did demise and grant to the plaintiff the glebe lands, and the tithes of corn, grain, hay, wool, lamb, and several other things arising in the said parish, for fourteen years; that by virtue of the said demise, the plaintiff became entitled to the tithes of all titheable matters and things arising in the said place, during the said term; that the defendant, for three years past, had holden several lands and grounds within the said rectory of *Husborne Tarrant*, and had thereon corn and grain of all kinds, and also hay, which he yearly cut and carried off; that he had also kept cows which had calves; and sheep which had produced lambs and wool; that he had also kept, fed, and depastured numbers of dry and unprofitable cattle,

cattle, by which he made great profit, and had had divers other titheable matters and things thereon, the tithes of all which were worth fifteen pounds a-year, which should have been paid to the plaintiff, or some satisfaction made to him for the same. The bill therefore prayed, that the defendant might set forth whether the plaintiff is not lessee of the said tithes, and account for the same.

The defendant said, that he believed the said *Forster* was impropriator of the rectory, and had made such lease to the plaintiff, whereby he became entitled to receive all the tithes that were due to the impropriator; and he set forth the quantity of land which he had held in the said parish, and the quantity of his tithes; but he insisted, that the tithes of the said premises, which are due to the impropriator, are only worth twelve pounds a-year, for that he is only entitled to the tithes of corn, lambs, and wool; and that the other tithes belong to the vicar, who had always received the same. He said, that he had never refused to pay all or any part of the said tithes in kind, but had always set out the same, and which he believed the plaintiff had received; that he had compounded with the vicar for the tithes of wood, hay, and other titheable matters which he had for the said three years, for twenty six shillings a-year; that the composition for clover hay and other hay was according to the quantity he sowed, and that, one year with another, he had paid him about thirty shillings; that as to the tithes of lambs, he acquainted the plaintiff therewith as they became due, that he might take them, but which he had refused to do; and that, after keeping the same for some time, he had tendered him two pounds, four shillings for the tithes thereof; and he denied, that he had ever pretended that any *modus* was due in lieu of tithes, or that the premises were exempt from tithes, or that he, the defendant, had any right thereto; and he disclaimed all title thereto.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides, and on reading the several proofs on both sides, and on full debate;

IT IS ORDERED BY THE COURT, that the bill be dismissed with costs, to be taxed by the deputy remembrancer of this Court, who is to deduct out of the said costs two pounds, four shillings, being the money tendered by the defendant to the plaintiff for his lambs; and to make an allowance to the plaintiff for the same.

THO. BURY.
JA. MONTAGUE.
RO. PRICE.
F. PAGE.

THOMP-

HELLIER
against
COOPER.

TRIN. TERM,
6. GEO. I.

THOMPSON *against* FIELD.

Yorkshire, 16th July 1720.

The rector of *Scarborough*, in *Yorkshire*, is entitled to the twentieth part of the fish, or the twentieth part of the value of such fish as are taken by any fishermen inhabiting the town of *Scarborough*, wheresoever the same may be caught or sold.

See ante, 116.

THE plaintiff filed his bill against the defendants, being fishermen and inhabitants of *Scarborough*, in the county of *York*, setting forth, that he, the plaintiff, was seised in fee of the rectory and tithes within the aforesaid parish, being formerly part of the possessions of the priory of *Bridlington*, in the said county; that upon the dissolution of the said priory, the same came to and was vested in THE CROWN; and that the plaintiff claimed the same by virtue of letters patent under THE GREAT SEAL, made thereof to *F. Morris* and *F. Phillips*, their heirs and assigns, dated the twenty-second of *December*, in the eleventh year of *James the First*, under the yearly rent of twenty-eight pounds, payable to the vicar of the parish of *Scarborough*; that the prior of the said priory, and afterwards the kings and queens of *England*, for the time being, and all claiming under them, as owners or farmers of the said rectory of *Scarborough*, have, time out of mind, constantly had and received by custom the twentieth part of the fish, or the twentieth part of the value of all fish taken and brought by any fishermen that were inhabitants of the said town of *Scarborough*, wheresoever the same were caught and sold, either at *Scarborough* or elsewhere, in lieu of the tithes of the said fish, by way of recompence or satisfaction for the employment of the ships, cobles, and boats, and of the labour of the inhabitants of the said town of *Scarborough*, exercising themselves in the said trade of fishing; that the said custom had been constantly, time out of mind, complied with without any interruption, till about the year 1651, when one *John Audley*, being then owner of the said rectory, filed his bill in this court against *T. Fiddy* and others, fishermen, being all inhabitants of *Scarborough*, who had refused to pay and satisfy the said *Audley* the twentieth part, or the value of the twentieth part of the fish taken at sea, and sold at several places distant from *Scarborough*; that on the hearing of the said cause, an issue was directed to be tried at the bar of this court, whether there was such custom, or not; and that upon the said trial, a verdict upon full evidence was given for the then plaintiff *Audley*, in establishment of the said custom; that since the said trial the owners or farmers of the said rectory, had constantly had and received the twentieth part of the said fish, or the twentieth part of the value thereof, from the defendants themselves, and others according to the said custom; that the plaintiff, as the present owner of the rectory, was well entitled to receive the same; but that the defendants, who were fishermen and inhabitants of *Scarborough*, for two years past, had refused to pay and satisfy him for the value of the twentieth part of the fish so caught and taken by them at sea, and not brought into *Scarborough*, but sold

sold by them at several other places, which by custom and right they ought to have done, The bill therefore prayed, that the defendants might answer the premises, and particularly set forth, whether there was such custom within the town of *Scarborough*, or not; and why they refused the twentieth part of the fish, taken by them at sea, and sold either at *Scarborough* or elsewhere, during the time demanded by the bill; and that the said custom might be established by the decree of this Court.

THOMPSON
against
FIELD.

The defendants said, that they believed the plaintiff was rector or impropiator of the said rectory of *Scarborough*, and as such was entitled to the twentieth part, or the value of the twentieth part of all fish, caught by fishermen inhabitants of *Scarborough*, which was brought into and sold at *Scarborough*; but they absolutely denied that there is any such custom as is set forth in the bill; or that they and other fishermen, being inhabitants within the said town of *Scarborough*, ought to pay and satisfy the plaintiff, as owner of the said rectory of *Scarborough*, the twentieth part, or the value of the twentieth part, of the fish which should be taken by them, or any other fishermen, being inhabitants of *Scarborough*, at sea, and carried to and sold at any other place than the said town of *Scarborough*, as tithes belonging to the said rectory; and they said, that they were strangers to the decree and the verdict mentioned in the bill, and therefore hoped that they should not be affected thereby.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the exemplification of a decree, made in this Court in *Michaelmas* 1654, *Audley v. Fiddy* (a); and likewise an exemplification of a verdict at the bar of this court, in *Michaelmas* 1654, between the said parties, in confirmation of the said custom, as set forth in the plaintiff's bill; and on reading the depositions of several ancient witnesses taken on both sides in this cause; and on long debate of the matter;

THE COURT was well satisfied of the plaintiff's right to the twentieth part of the fish taken by the fishermen, being inhabitants of *Scarborough* aforesaid, at sea, or the value of such twentieth part, wheresoever the same fish are sold, as tithes belonging to the said rectory.

IT IS THEREUPON ORDERED, ADJUDGED, AND DECREED, that the custom of paying tithes for the fish taken at sea, by the fishermen, being inhabitants of *Scarborough*, be, and is hereby established against the defendants as demanded by the bill; and that the defendants do respectively account with and satisfy the plaintiff, for the value of the twentieth part of the fish taken by

(a) See vol. I. page 5.

THOMPSON
against
FIELD.

each of them at sea, during the time demanded by the bill, wheresoever the same were sold; and it is referred to the deputy remembrancer to take the said account.

TRIN. TERM,
6. GEO. I.

BOWSER against HODGSON.

Durham, 20th June 1720.

The manner in which the impropriator of the township of *Bondgate*, in *Auckland*, in the county of *Durham*, shall receive the tithes thereof.

THE bill stated, that the plaintiff, for above twenty years past, had been seised to him and his heirs of the tithes of corn and hay, and all other tithes, *Easter* reckonings, and other payments, arising, &c. within the township of *Bondgate*, in *Auckland*, in the county of *Durham*, and titheable places thereof, to the late collegiate church of *St. Andrew* in *Auckland* belonging; that the defendants, for three years past, had been owners or farmers of several lands and tenements in *Bondgate*, whereon they had in each year depastured cows, mares, sheep, and other cattle, and had calves, foals, and lambs, and also considerable increase from their said cattle; that they had also corn, wool, hay, and other things, for which they ought to have paid tithes in kind to the plaintiff, or to have agreed with him for the same; but that they had refused so to do, on pretence of an agreement to pay sixpence an acre in lieu thereof. The bill therefore prayed a discovery of their lands, and of the quantities, qualities, and values of their tithes, and that they might account for them, and set forth the exemption they had set up.

The defendants said, that they knew not that the plaintiff was seised to him and his heirs of the tithes of corn, hay, wool, and lamb, and all other tithes in the said township, or that he was entitled to any manner of tithes or other ecclesiastical duties therein, save that they believed that the plaintiff's grandfather was entitled to him and his heirs of and in one undivided half part of the tithes of corn in *Bondgate*, or to some customary payments or compositions for and in lieu of the tithes of hay, wool, lamb, and other small tithes. They said that they never knew of any tithes in kind being paid for *Bondgate* lands, but believed there was a *modus* payable in lieu of the same. They further said, that the minister or curate of *St. Andrew's*, in *Auckland*, for many years had been entitled to one moiety of the corn tithe, and to all the *Easter* reckonings, oblations, and other ecclesiastical duties in *Bondgate*, save such as they acknowledge to be due to the plaintiff; that if any tithes in kind were due to the plaintiff for calves, lambs, or fleeces of wool, yet that as they had not had to the number of ten in any one year, there were no tithes in kind by law due for the same.

The defendants *Hodgson* and *Arundel* said, that they believed there was sixpence an acre paid as a *modus* or prescript rent for the tithes of the lands in *Bondgate*; that the plaintiff's grandfather

father, upon the division, had agreed to ascertain the yearly payments in lieu of tithes, and that an agreement was made to that effect; that a bill was filed in the court of chancery of *Durham*, by the plaintiff's grandfather and his son, against some of the freeholders in *Bondgate*, for a division, and that on the then defendants answering the same, a decree was made for a confirmation of the divisions formerly made, and for dividing and inclosing the residue; that a commission issued, and divisions were made thereon and returned into the said court; and that they were by the said court established.

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against
HODGSON.

And all the defendants denied, that they ever had made any agreement relating to the tithes, and said that they believed, that since the division before-mentioned had been made, the annual payments have been certain; but that they knew not how the ancient *modus* of sixpence an acre came to be altered upon the division; and they hoped, that as such annual payment had been made and accepted by the plaintiff and his ancestors for fifty years, he shall not now be permitted to take tithes in kind, or to alter the annual payments. They also said, that they knew not that the lands called *Haver Closes* were part of the town field lands; or that the plaintiff did frequently take his tithes in kind in the said closes, or in any grounds that were parcel of the town fields, except a moiety of the corn tithe; they denied, that they had any corn on their grounds, and said that they believed that mortuaries are due to the plaintiff when deaths happen.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff, and the defendants joined therein; but before any further proceedings were had therein, the plaintiff and the defendants, upon the twenty-first of *July 1719*, came to an agreement in writing under their hands and seals, whereby it was agreed, that the said complainant should and might have and take a decree in this cause, for the establishing of his right to the tithe hay and other small tithes of calves, foals, lambs, pigs, geese, hens, ducks, turkeys, mortuaries, *Easter* reckonings, and cow groats, *viz.* twopence a cow, if they calve in the meadow ground, and fourpence, if they calve in the pasture ground, and of all other small tithes whatsoever of all the lands and grounds belonging to these defendants or any of them, and lying and being within the precincts and territories of *Bondgate*, in *Auckland*, in the bill mentioned, which tithe of hay and other small tithes are thereby admitted and agreed to be due to the plaintiff; and also for one moiety or half part of all the tithe corn in the lands and grounds of the said defendants in *Bondgate*, in *Auckland* aforesaid, which is also admitted to belong to the complainant, and the complainant to have his costs of this suit, to be taxed by their solicitors, on or before the fifteenth day of *December* next, and if they

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did not agree upon the same, they were to elect such person to tax the same, as they thought proper : and as to the complainant's demands for tithes heretofore due and substracted by the said defendants, the account for the same being then settled and adjusted, it was also agreed, that the complainant should for the said tithes so substracted, have a decree to recover of and from the said defendants, the several sums as mentioned in the said agreement ; which agreement, upon motion made to the court by plaintiff's counsel on the twenty-third of *January* last, and hearing the defendant's counsel, was made an order of this court ; and the time limited by the said agreement for taxing the costs was enlarged to the last day of term.

By a subsequent order, dated the thirtieth of *May* last, by consent of all parties, publication was ordered to pass, and the cause be set down to be heard, the defendants to appear gratis, and the costs to be referred to the deputy remembrancer to be taxed, but not as between party and party, but to have regard to the said agreement, and if the Court so pleased, the decree to be made therein was to be made according to the said agreement.

The cause now came on, and upon opening the bill and answer, and reading the said agreement,

IT IS ORDERED AND DECREED BY THE COURT, by and with the consent of the counsel of both parties, that the said agreement, and the plaintiff's right in and to the tithes arising upon the several lands and grounds of the said defendants, lying and being within the said precincts of *Bondgate*, in *Auckland*, in the bill mentioned, be and are hereby established and confirmed by this Court ; and that the said defendants shall severally satisfy and pay to the plaintiff, for the tithes from them respectively due to the plaintiff, the several sums, in the said agreement mentioned to be from them respectively due to the plaintiff, for their several tithes heretofore due and substracted ; and it is hereby referred to the deputy remembrancer to tax the said costs, pursuant to the said order of the thirtieth of *May* last.

MICH. TERM,
7. GEO. 1.

FISHER against LEAMAN.

Devonshire, 16th November 1720.

A butcher who carries on his trade in one parish, but lodges and boards with his father in another, and occasionally turns his beasts into for the same ;

THE bill stated, that the plaintiff, in the year 1689, was lawfully instituted, &c. into the rectory and parish church of *Hemyock*, in the county of *Devon*, and had been ever since, and still was, rector thereof, whereby he had become entitled to have and receive all the tithes, as well great and small, and all offerings and duties arising therein ; and also all sums of money and his father's lands, and pays him for the feeding thereof, is not liable to pay tithes but is liable to pay *Easter* offerings. S. C. 2. Eq. Abr. 732. S. C. 8. Vin. Abr. 38. things

FISHER
against
LEAMAN.

things whatsoever which, during the said time, had, by any custom or *modus* within the said parish and the titheable places thereof, been payable to the plaintiff as rector of the same; that the defendants, or one of them, for three years past, had occupied, possessed, and enjoyed, a messuage or tenement, with gardens, orchard, and forty acres of meadow and pasture belonging thereto, called *Cley Park*, for which tithes ought to have been paid to the plaintiff in kind; that on the said premises there had been yearly bred up, fed, depastured, and agisted several horses, folding mares, colts, oxen, bullocks, cows, calves, wether sheep, ewes, lambs, pigs, fows, and other cattle, the tithes whereof were annually worth three pounds: that they had also kept geese, turkies, and other poultry, which had laid eggs and had young; that they also kept bees, which made honey and wax, the tithes of which were yearly worth five shillings, and several other things, for which the plaintiff ought to have received tithes in kind, but which they had refused to pay on several pretences. The bill therefore prayed a discovery and an account.

The defendant *Leaman* admitted the plaintiff to be rector as aforesaid, and that he was entitled to the great and small tithes of the parish, or to some *modus* in lieu thereof; and he confessed, that his father, for the said three years, had held and enjoyed *Cley Park*; but he insisted, that he had fully paid and compounded with the plaintiff for the tithes of the same. He denied that he had ever rented, occupied, or enjoyed, as tenant, any messuage or lands in the parish, or in the titheable places thereof, or that he had ever bred up, fed, depastured, or agisted, on the said farm, any horses or other cattle, as in the bill is alledged; and said, that he was a butcher, and boarded with his father, but that he rented lands in *Clebydon* parish, and did sometimes bring home cattle from a fair late at night, and put them upon the said farm called *Cley Park*, but that he drove them away the next morning home to his said parish, and that he had satisfied his father for the same before this suit was commenced; and therefore he is advised that no tithe is due from him to the plaintiff. He also denied that he had ever kept any poultry upon *Cley Park*; and said, that he believed his father had fully satisfied the plaintiff for his said tithes for the said three years; and that he only owed to the plaintiff fourpence for two years *Easter* offerings as a single man, which he is ready to pay; but that the plaintiff had sued him for the same in the spiritual court. He confessed that he had used the trade of a butcher ever since the expiration of his apprenticeship with his father, and had bought all sorts of cattle in the way of his trade, but had never depastured any of them in the parish of *Hemyock*, other than as aforesaid; and he denied that any tithes were due from him as in the bill is alledged.

FISHER
against
LEAMAN.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading the proofs taken in the cause, and hearing counsel fully on the matter ;

IT IS ORDERED AND ADJUDGED BY THE COURT, that the bill be dismissed (a), with costs to be taxed by the deputy remembrancer.

(a) The Court agreed, that the demand ought to have been against the occupier of the land for the agistment tithes, if any had been due ; but the Barons thought that nothing was due ; and MR. BARON PAGE observed, that as to what had been said, that the

demand might be either against the occupier or the agistor, it could not be ; for the same duty could not arise in two different persons at the same time. S. C. 2. Eq. Abr. 733. S. C. 8. Viner Abr. 38. pl. 7.

MICR. TERM,
7. GEO. I.

Fox against RUTTY.
Wiltshire, 7th December 1720.

The vicar of Melksham, in Wiltshire, claims the small tithes in kind, particularly of the farm called *Iley* ; and says, that as there is no *modus*, and as he is under no composition with the defendant, he is entitled to demand for him a rate of 2s. in the pound, tho' the tithes are generally taken by ambulatory composition.

S. C. Bunb. S.7.

THE bill stated, that the plaintiff, for eighteen years last past, had been vicar of the parish of *Melksham*, in the county of *Wilts*, and, by an ancient endowment of that vicarage which is on record in the muniment house of the cathedral church of *Sarum*, is entitled to all small tithes and dues arising in the parish and in the precincts thereof, and particularly to the tithes of milk, calves, wool, lambs, pigs, geese, turkeys, hens, poultry, eggs, fruit, and the tithe of the herbage on which sheep and unprofitable cattle are depastured and fed ; and that the occupiers of all lands in the parish ought to set out their tithes yearly in kind, or to compound for the same, according to their respective values, which, as the same is not ascertained by any *modus*, ought to be according to a yearly agreement between the plaintiff and his parishioners by way of an ambulatory composition ; that the defendant, for several years last past, had occupied several messuages and lands in the parish, some part of which was his own estate, and the other rented of *J. Selse*, *H. Long*, and *R. Smith*, among which were certain lands called *Flowers*, *Iley*, and *Caltherpe Long*, otherwise *Parker Weate* ; that the said defendant had yearly fed the said lands with dry, barren, and unprofitable cattle ; that he had cows which had milk ; and calves, and sheep which had lambs and wool ; and also had other titheable things, the tenth whereof ought to have been set out in kind, or paid for at the rate of two shillings a pound, the plaintiff not being under any agreement with the defendant by way of composition for the same ; but that the defendant had refused so to do, or to make the plaintiff any satisfaction for the ground or estate called *Iley*, and for some other lands which he had held for six years past, amounting to thirty-eight pounds *per annum*. The bill therefore prayed that the defendant might be ordered to discover the particulars and values of the lands he held, with the yearly titheable matters and values of the same

he

he had had thereon, and to account with the plaintiff for the same.

Fox
against
RUTTY.

The defendant admitted, that the plaintiff was vicar ; but whether he was entitled to the vicarial tithes and dues he knew not ; but he said, that, during the years in the bill mentioned, he had occupied the several lands stated in the bill, and under the several persons therein mentioned ; that during the said time he had occupied a ground, called *Iley*, which he rented of *C. Long* ; but whether it is in the said parish he knew not ; and he set forth the several titheable matters and things which he had in the said years, with the values thereof. He also said, that he had some apples, plumbs, and cabbages, none of which he sold ; and that he never knew any tithes paid or demanded for such things ; but that if they were subject to pay tithes, he believed that such tithes were included in a composition of ninepence in the pound which was paid for the tithes of the produce of lands in the said parish ; and that it is therefore unreasonable that the plaintiff should insist on a rate of two shillings in the pound of the yearly value thereof ; the said ninepence in the pound being esteemed the yearly value of estates there ; that the vicar had received and taken the same in full for such tithes, without any annual agreement thereupon ; and that such rate had been, save in one instance, observed as a rule within the said parish for rating vicarial tithes ; which rate, considering the trouble and charges of taking tithes in kind, he believed to be the full value thereof, although the plaintiff had given notice that he would not now take the said composition ; that having, for the year 1716, paid the plaintiff in full for all tithes, *Iley* excepted, at ninepence in the pound, he, about *Easter* 1718, being the usual time of payment, had offered and tendered the said rate for all the premises, *Iley* excepted, but which the plaintiff had refused to accept. He also said, that as to the vicarial tithes claimed for *Iley* nothing was due, for that a *modus* had been taken and received by the rector of the parish of *Whaddon*, time immemorially, as would appear by the ancient terriers, registers, and memorandums of the said parish, now extant ; and he averred, that the said ground, called *Iley*, lies in the parish of *Whaddon*, and not in *Melksham*, to which first parish it is charged to the land tax, poor's rate, &c. And he insisted upon paying the said ninepence in the pound in satisfaction for tithes due.

The defendant says, it is unreasonable to demand 2s. in the pound, the ambulatory composition being only 9d. in the pound, and the vicar having received that rate in lieu of the vicarial tithes of the lands in his occupation, except the lands called *Iley*, which he says lie in the parish of *Whaddon*, and the tithes of which have always been paid to the rector there.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and on reading several of the proofs taken in the cause for the plaintiff ; and an endowment of the vicarage of *Melksham*, dated the *Saturday* after *Ascension* 1249 ; and on reading, for the defendants, an ancient

The evidence read.

Fox
against
RUTTY.
Issues directed
to try,

Whether *Iley* is
in *Whaddon* or in
Melksham ;

and, whether the
tithes have been
usually paid.

The defendant
ordered to ac-
count for all his
tithes, except of
Iley.

The jury find,
that *Iley* lies in
Melksham, but
that no tithes
have usually
been paid for
the same.

The Court of o-
pinion, that the
vicar is entitled
to the tithes
thereof ;

See Bunb 87.

and order the
defendant to ac-
count accord-
ingly.

The deputy
makes his re-
port ;

and the defend-
ant ordered to
pay the sum re-
ported to be
due.

terrier of the rectory of *Whaddon*, of the eighth of *October* 1608 ;
and another terrier of the first of *June* 1619 of the rights of
the vicarage of *Melksham*, the Court directed a trial at law to
be brought by the plaintiff upon the following issues :

FIRST, " Whether the piece of ground, called *Iley*, in the
" pleadings mentioned, doth lie in the parish of *Whaddon*, or
" within the parish of *Melksham* ? "

SECONDLY, " Whether the tithes of *Iley* have been usually
" paid or received by the rector of *Whaddon*, or vicar of
" *Melksham* ? " to be tried by a special jury.

THE COURT also ordered, that the defendant do forthwith
come to an account with the plaintiff before the deputy remem-
brancer of this court for all the matters and things titheable
(except for the lands called *Iley* aforesaid) which the defendant
had arising, &c. within the said parish of *Melksham*, and the
titheable places thereof, in and during the several years in the
bill charged ; the said deputy to tax the plaintiff his costs to this
time.

Pursuant to the said decree, an issue was drawn ; a *disfringer*
made for a view ; the place viewed by seven of the jurors ; the
cause tried ; and, after a long debate, a verdict was given for
the plaintiff, " that the piece of land called *Iley* lay in the
" parish of *Melksham*, and not in the parish of *Whaddon* ; and
" that the tithes were not usually received by the vicar of *Melk-*
" *sham*, nor by the rector of *Whaddon*."

But it being found by the verdict that the ground lies in *Melk-*
sham, the Court was of opinion, that the tithes of *common right* are
due to the vicar of *Melksham* ; and that the non-payment of
them has not extinguished his right ; and therefore, on the six-
teenth of *November* 1721, upon reading the said decretal, order,
and *posse* ; and on mature and deliberate debate of the matter ;

IT IS ORDERED, on the seventh of *December* 1721, that the
defendant shall account with the plaintiff for the tithes of the
said lands and grounds called *Iley*, as well as for the other tithe-
able matters and things in the said decretal order mentioned.
And it is referred to the deputy remembrancer to take the said
account, and to tax the plaintiff his costs at law and in equity.

In pursuance of the decree made the seventh of *December*
1721, the deputy made his report, dated the twenty-ninth of
June last ; and upon reading the decree and report, no excep-
tions having been filed thereto, it is ordered by the Court, on
the twelfth of *July* 1723, that the report be ratified and con-
firmed, and that the defendant shall forthwith pay to the
plaintiff forty-one pounds, twelve shillings, and twopence for
the

the value of his tithes in question so reported due, together with his costs, to be taxed by the said deputy remembrancer.

Fox
against
RUTTY.

RO. PRICE.
JEFF. GILBERT.

PRICE *against* EDGE.

HILARY TERM
7. GEO. I.

Shropshire, 22d February 1720.

THE bill stated, that *Scroop, Earl of Bridgwater*, being impro-
priator and rector of the parsonage and rectory of *Ellesmere*,
in the county of *Salop*, and entitled to the tithes of hay and
of all sorts of grain, as wheat, oats, barley, rye, pease, beans,
and all other sorts of grain whatsoever in kind, happening, &c.
within the said parish and the titheable places thereof, and par-
ticularly within the township of *Ellesmere*, did, by indenture
dated the sixteenth of *May*, in the fifth year of *Queen Anne*,
for the considerations therein mentioned, demise to *W. Swan-
wick* the tithes of all the corn, grain, and hay, arising, &c.
within the said township, to hold to him, his administrators,
executors, and assigns, for twenty-one years, at twenty-one
pounds a-year; and that by indenture of lease, dated the
twenty-fifth of *March 1718*, the said *W. Swanwick* did demise
to the plaintiffs all the tithes aforesaid arising yearly within the
said township, to hold to them, their executors, administrators,
and assigns, at the yearly rent of twenty-eight pounds, ten
shillings (saving and excepting to the said *W. Swanwick* the
tithe of hay of such lands as should be occupied by him,
provided that such lands did not exceed six acres); that by
virtue of the said indenture of lease the plaintiffs became entitled
to, and ought to have and receive all the tithes of garbe, blade
corn, grain, and hay, yearly arising, &c. within the said township
(save the tithes as aforesaid reserved to the said *W. Swanwick*);
that the defendants had, ever since the twenty-fifth of *March*
1718, been, and still are, owners and occupiers of several lands
lying in the said township, called *the Half Calcott*, containing
about six acres, which have been sown with wheat, oats, barley,
rye, pease, beans, or other grain, and whereon grass and hay
hath arisen and grown, and been by them mowed, reaped, cut,
and taken away, without setting out the tithes thereof, or
making any satisfaction for the same. The bill therefore
prayed a discovery of the same, and of the quantities and
values of grass, wheat, and other grain, carried away, and for
an account.

An issue direct-
ed to try, whe-
ther the piece of
land called *Lang-
ford's Half Cal-
cott*, in the parish
of *Ellesmere*, in
the county of
Salop, is in
the township of
French, or in the
township of *El-
lesmere*.

The defendants said, that neither of them knew that the *Earl*
of Bridgwater is impropiator of the said rectory, and entitled to

PRICE
against
EDGE.

all the said tithes, or that he demised the same to *Swanwick*, and he to the plaintiffs; but they said that they had heard so.

The defendant *Jackson* denied, that he possessed any lands in *Ellesmere* township in the said years; but admitted, that he had one year rented the tithes of *French* township, lying also in the said parish; but said, that it was a distinct tithing, and taxed separately from *Ellesmere* township.

The defendant *Edge* said, that for one year he had also rented the said tithes of *French* township, and also *the Half Calcott* lying therein; that the said piece laid fallow for one year; that about *Michaelmas* 1718 he sowed it with wheat, the tithes of which were four thraves and eight shaves, and were worth one pound, eight shillings; that he, as tithman of *French*, took away the said tithes to his own use; that in the said year he had some hay, the tithe of which was worth one penny, and which he had also taken away. He also said, that he held other lands in the said township, the tithes of all which the plaintiffs either took away in kind or in money. He said also, that for thirty years past he and his father had rented a close, called *the Half Calcott*, which adjoined to *Mr. Langford's Half Calcott*, and which he believed to have been formerly one close, though now divided; that both of them are of equal quantity, and lie in the township and tithing of *French*, and not of *Ellesmere*; and that when they have been sown, the tithes have always been paid to the township of *French*.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on to be heard only against the defendant *Edge*; and upon reading an indenture, dated the first of *July*, in the sixth year of *James the First*, purporting to be a purchase deed by the ancestors of the said *Langfords* of the premises in dispute, called *Langford Half Calcott*; and upon reading the proofs taken in the cause on both sides; and upon full debate;

IT IS ORDERED BY THE COURT, that the following issue be tried, viz. "whether the piece or parcel of ground in the pleadings mentioned, called or known by the name of *Langford's Half Calcott*, lying in the said parish of *Ellesmere*, in the county of *Salop*, or any and what part thereof, is situate, lying, and being, in the township and tithing of the township of *Ellesmere*, or not?"

And it is further ordered by the Court, by consent, that a view be had by the jury of the said premises.

And

And the further consideration of this cause is adjourned until the return of the *poslea* (a).

PRICE
against
EDOX.

THE COURT FULL.

(a) On the 21st November 1695, Michaelmas Term, 7. Will. 3. *Ottiswell*, the vicar of *Allesmere*, filed his bill against *Barton* for the vicarial tithes, particularly for the agistment tithes of a messuage, called *Britz*, with the lands thereunto belonging, in the township of *Duddleston*, in the said parish. The defendant said, that no tithes had ever

been paid for the said farm; and insisted, that it was tithe free. But on reading the depositions, THE COURT ordered the defendant to account for the tithe herbage for the time the cattle and horses were fed and depastured on his grounds during the time stated in the bill.

HICKS against GOLDING.

HILARY TERM
7. GEO. 1.

Wiltshire, 6th February 1720.

THE bill stated, that the plaintiff, for thirty years past, had been, and is, rector of *Broughton Gifford*, in the county of *Wilt*, and entitled to the tithes arising in the said rectory; that the defendant, in the year 1711, occupied meadow and pasture ground in the said parish, and also, about calving time in the said year, other grounds, on which he kept divers cows for a length of time, and then depastured them during the rest of the year on his own lands; and that he, some few days before they calved, drove several cows on *Hutton's Land*, where they calved: that he had also, during three years, occupied meadow and pasture land, on which he had fed several dry, barren, and unprofitable cattle; that particularly in the year 1719 he occupied four acres of meadow in *Mitchell Mead*, and cut and carried away the hay of the same, without setting forth the tithe thereof, or making any recompence to the plaintiff, pretending that the lands he rented of *Hutton* were under a composition with the plaintiff. The bill therefore prayed a discovery of quantities and values, and account for the same.

The rector of *Broughton Gifford*, in *Wiltshire*, is entitled to the tithes of *Hutton's Land* and *Mitchell's Mead*, in kind.

The defendant admitted the plaintiff to be rector of the parish, and entitled to the tithes in the bill set forth; that he occupied lands of his own to the value of seventy pounds a-year, and no more; and that he had removed the cattle from those lands into other lands; that he did so on account of the other lands paying tithes by composition, and of his usually keeping his cattle during the winter season in houses and stalls until the inclement weather abated; that he had driven about nine cows, which were then with calf, from the said houses and stalls on his own lands into *Hutton's Lands*, to prevent the calves from being injured; that it was his custom always on the approach of spring and calving time to drive his cows from the said houses and stalls to the best ground he could get, whether within the said parish or in the adjacent parishes, to preserve the calves; and that the same was not done with any design to wrong the

HICKS
against
GOLDING.

plaintiff; that he rented land of *Hutton* in the year 1711, in which there were calved nine calves; and that he had fourteen loads of hay one year with another arising on the lands in the bill mentioned. He averred, that the tithes of all his lands in the said parish were not worth above forty-four shillings a-year great and small, which he had usually paid to the plaintiff, and was willing to do so in future; that he justly paid every thing that was due for tithe for hay and apples and other fruit during the preceding year; and that, during the last summer, he had given the plaintiff notice to take his tithe in kind, but that he had never come. He confessed, that he occupied twenty acres in *Mitchell Mead*, and averred, that he had paid the tithes for all, except the said four acres, which he insisted were tithe free; and denied that the plaintiff or his predecessor had ever received tithe thereof. He also averred, that he had paid to the plaintiff, or tendered to him, all his just dues; and that he was willing to pay the forty-four shillings a-year, which the plaintiff had refused to accept.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause;

IT IS ORDERED BY THE COURT, that the defendant shall and do forthwith come to an account with the plaintiff before the deputy remembrancer for all the tithes and titheable matters for the said years by the said bill demanded.

THE COURT FULL.

HILARY TERM
7. GEO. 1.

POWELL against POWELL.

Monmouthshire, 23d February 1720.

The vicar of *Llantilio*, with the chapelry of *Penrose* annexed, in the county of *Monmouth*, claims the tithes of hay, clover, and clover seed, in *Llantilio* and *Penrose* and in the *Demefne Lands* of the free chapel in *Llanwair Gilgud*.

THE case stated, that the plaintiff was, in the year 1713, duly inducted, &c. into the vicarage of *Llantilio* and chapelry of *Penrose*, in the county of *Monmouth*, and entitled to the tithes and other things thereto belonging, particularly to the tithes in kind of clover grass, hay, clover, clover seed, lambs, wool, apples, and other small tithes; that the defendants, for six years past, had occupied and held several lands therein, from which they had cut clover grass, clover hay, and clover seed, and on which they had lambs yeaned, and other tithes, the tenth whereof ought to have been set out and paid to the plaintiff for tithe; but that they pretended he was not entitled thereto. The bill therefore prayed a discovery, and satisfaction for the same.

The

The defendant *Smart* said, that he believed the plaintiff was legal vicar, and entitled to the vicarial tithes and dues arising in the said parish, and in *Chakeley*; but he denied that he was entitled to all tithes in kind, for that there was a *modus* in *Llantilio Croessney* of twopence a day's math, payable in lieu of the tithes of all grafs and clover cut or mowed for hay or seed; and that in and through the parish and chapelry of *Penrose*, except in three meadows, there was a like *modus* of one penny a day's math; and he said that all former vicars, time immemorial, had accepted such *moduses*; that the plaintiff himself, for some years, had submitted thereto; and that tithes in kind of such hay and seed had never been paid. He admitted that he held several lands, during the said years, from which he had cut hay and clover; and said, that he was ready to pay the said *moduses*, which he had duly tendered to the plaintiff, amounting to three shillings and eight pence for forty-four days math of hay.

The defendants, the *Powells*, admitted the plaintiff was vicar, but insisted on the said *moduses*; and said that they had cut the like quantity of hay, and had tendered for the same one shilling for the year 1717; and that they had satisfied the plaintiff for all their tithes for the preceding years.

The defendant *Crofts* said, that neither the plaintiff, nor any former vicar, was entitled to any tithes or offerings from or out of her ancient free chapel of *Llanwair Gilgeed*, or the *Grange* or *Demefne Lands* thereto belonging, and wherewith it was anciently endowed, or to any *modus* or composition in lieu thereof; that she and her ancestors had been, above one hundred and fifty years, owners and occupiers of the said chapel, exempt from all tithes; that the said grange, chapel, and lands, were allotted out of the ancient free forest of *Grosfmount*, within the bounds of the said parish of *Llantilio Croessney*, and were part of those possessions and *demefne lands* of the abbey of *Door*, of which the abbot and monks were seised at their dissolution; and that they were entitled to all tithes thereof, or else had held the same exempt from tithes; that the said abbey and lands came to THE CROWN on the dissolution of the said abbey; that THE CROWN had granted the same to those under whom she claimed; and that the same had been ever since, and time out of mind, enjoyed exempt from all tithes to the vicar or impropriator; that she had never heard of any tithes, duties, or offerings being claimed by any vicar in respect of the said lands and premises; and therefore she insisted, that she ought not to pay any tithes or dues in respect thereof. She admitted that, in the year 1717, she had occupied other lands in that parish, from which she made a hogthead of perry, for the tithe of which the plaintiff had accepted one shilling since the suit began; and that she had mowed from such other lands one day's math of clover and grafs mixed; and insisted, that the *modus* of two-

POWELL
against
POWELL.

The defendants admit the plaintiff is vicar; but say, there is a *modus* in *Llantilio* of 2d. a day's math, and in *Penrose* and *Llanwair* of 1d. a day's math of clover and hay, in lieu of the tithes thereof;

and that the free chapel of *Llanwair Gilgeed* is tithe free, as having been parcel of the possessions of the abbey of *Door*.

POWELL
against
POWELL.

pence a day's math extends over all the parish (except the grange and lands so exempted), and that the same had been constantly paid and accepted by the plaintiff's predecessors; and she averred, that she was ready and willing to pay according to the *modus* for two days math of hay cut from the said lands not exempted from tithes.

The cause
heard,

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and the cause came on at the defendant's request; and upon hearing counsel, and what was alledged by them for all the said parties;

and all the de-
fendants dismis-
sed.

THE COURT declared, that they saw no cause to give the complainant any relief in the premises; and therefore ordered and adjudged, that the said several defendants be absolutely dismissed out of this court from the said bill, and the matters and things therein contained, with costs to be taxed by the deputy remembrancer of this court, to whom it is hereby referred to tax the same.

THO. BURY.
RO. PRICE.

HILARY TERM
7. GEO. 1.

JONES against DAVIES and WINN.

Flintshire, 22d February 1720.

The rector of Bangor, in Flintshire, is entitled to tithe of herbage for depasturing sheep fed for the butcher, and barren and unprofitable cattle on the lands called *the Dole Bangor*, *the Nuntefover*, *the Tyrod*, and *the Brynax Dongrey*.

THE bill stated, that the plaintiff was instituted, &c. into the parish and parish church of *Bangor*, in the county of *Flint*, and had been rector there for many years past, and by virtue thereof had become entitled to all manner of tithes arising therein, and particularly to the agistment and tithe herbage of all barren and unprofitable cattle depastured on any lands in the said parish; that the defendants, for several years past, had been owners or occupiers of lands therein, whereon they had depastured several dry, barren, and unprofitable cattle; that particularly the defendant *Winn* had held and occupied a parcel of land in that parish, called *the Dole Bangor*, then divided into two parcels, and another parcel, called *the Nuntefover*; that during the said time he had depastured thereon divers unprofitable cattle, and had fattened sheep for the butcher without paying anything for the agistment or tithe herbage thereof, though the tithes amounted to eight pounds a-year; that the defendant *Davies*, for two years past, had been owner or occupier of a parcel of land in the said parish, called *the Tyrod*, and also of another parcel, called *Brynax Dongrey*, and had depastured the same with unprofitable cattle and sheep for the butcher, for which he ought to have paid tithes yearly, according to the value of the lands. The bill therefore prayed a discovery of quantities and values, and an account for the same.

The

The defendants admitted, that the plaintiff was inducted into the said rectory, and entitled to all tithes arising therein, except the agistment and tithe herbage of barren and unprofitable cattle depastured on certain land there by the inhabitants of the said parish.

The defendant *Davies* admitted, that for two years past he had been occupier of a parcel of land, called *Tyrod* and *Brynax Dongrey*, and had depastured thereon some unprofitable cattle.

The defendant *Winn* admitted, that for six years past he had occupied land, called the *Dole Bangor* and *Nuntefwer*, and had grazed thereon some unprofitable cattle.

And both the defendants admitted, that they had not paid or allowed anything in lieu of tithe herbage for such unprofitable cattle; but alledged, that they had refused so to do, because that, during all that time, they had been inhabitants of the said parish, and had paid other tithes in kind, according to custom, to the plaintiff, and the plaintiff had made no demand of tithe herbage until lately; and they insisted, that they were exempted from payment of any such tithes for the agistment or depasturing of unprofitable cattle on the said lands; for that the occupiers of land in the said parish who reside there are, as they conceive, exempted from such tithe herbage by the custom of the said parish, or otherwise by law, on payment of their other tithes, no such inhabitant having ever, to their knowledge, paid to the rectors of the said parish, or to their farmers, any tithe herbage, or any satisfaction for the same, for unprofitable cattle by them depastured in the said parish.

for the pretended custom that the landholders are exempted from the payment of agistment tithes, on paying all other tithes, is bad.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;

THE COURT was satisfied, that the plaintiff is entitled to have tithes from the defendants for the barren and unprofitable cattle fed on their respective grounds within the said parish; and therefore ORDERED AND DECREED, that the said defendants shall account with and satisfy the plaintiff for the agistment or tithe herbage of the unprofitable cattle by them respectively depastured on the several closes of land in the bill mentioned for the several years therein charged; the taking of which account is hereby referred to the deputy remembrancer.

In obedience to the said decree, the deputy remembrancer made his report, dated the twenty-sixth of *June* last; and upon reading the said decree and report, no exceptions having been filed thereto,

IT IS ORDERED BY THE COURT, on the seventh of *July* 1721, that the said report be ratified and confirmed, and that the defendants shall respectively satisfy and pay to the plaintiff the several

JONES
against
DAVIES AND
WINN.

several sums so reported due for their agistment tithes, together with the plaintiff's costs, to be taxed by the said deputy.

BURY, *Chief Baron.*
PRICE, *Baron.*

EASTER TERM
7. GEO. 1.

PYE against REA.

Monmouthshire, 27th April 1721.

The vicar of
Dixton, in *Mon-*
mouthshire, is en-
titled to the
tithes of *Priory*
Wood in kind.

S. C. Bunb. 72.

THE plaintiff, as vicar of the vicarage and parish church of *Dixton*, in the county of *Monmouth*, stated by his bill, that he is, and for two years past had been, lawful vicar there, and ought to have had and received all tithes of coppice wood, and all small and minute tithes, oblations, offerings, and other profits whatever, and all portions, compositions, rates, and payments in lieu of tithes, or some satisfaction in lieu of the same yearly, which by common right or custom, time out of mind, have been due or payable to his predecessors; that all and every person and persons owners and occupiers of messuages, gardens, lands, and grounds at all times justly paid or ought to pay tithes in kind, or make some satisfaction; that the defendant, for three years past, had been owner and occupier of a large coppice wood, called *Priory Wood*, and of other coppice woods and underwoods there, and had felled and cut down the same, and made thereof one thousand cords of wood, and had sold great quantities of hoops of ash and other trees from the wood so fallen, without setting out the tithes thereof, or making any satisfaction for the same, on a pretence that the said woods are exempted from the payment of tithes in kind, and liable only to a certain *modus* in lieu thereof. The bill therefore prayed a full discovery, and an account for the same.

The defendant admitted, that the plaintiff was vicar as stated in the bill, and entitled to all tithes personal, predial, and mixed (a); but he denied that either the plaintiff or his predecessors had any right to the tithes of the said woods. He admitted, that he had been, for several years past, owner of *Priory Wood*; that it was formerly part of an ancient messuage and lands, called *Priory Estate*, or the demesnes of the ancient dissolved priory of *Monmouth*, situate in the parish of *Saint Margaret*; and that the said *Priory Estate* and *Priory Wood* are all exempt from the payment of tithes, and so had been enjoyed time out of mind; for that *Monmouth* anciently was a cell to the abbey of *Saint Florence*, at *Samures*; that one *Wilienochut*,

(a) It seems to have been contended in this case, on the part of the defendant, that the vicar ought to have shewn in the bill a special title to the tithes, either by endowment, prescription, or

otherwise; but it is said, that this general admission that he was entitled to all sorts of tithes, had rendered it unnecessary. S. C. Bunb. 72.

then

PYE
against
REA.

then lord of *Monmouth*, built a church in his castle of *Monmouth* to the honour of God, *Saint Mary*, and *Saint Florence*, and gave it in perpetual alms to the monks of *Saint Florence*, at *Samures*, from whence he used to call the monks to live and serve in the said church, and for their encouragement gave them possessions in lands, churches, and tithes, and three plough lands near his castle of *Monmouth*, as by the charter of foundation, memorandums, and records will appear; that the priory of *Monmouth* afterwards continued for some time in the hands of some of the monks of *Saint Florence* till the dissolution of the alien priories in the reign of *Henry the Fourth* or *Henry the Fifth*; that after the said dissolution, the said priory and wood were given, settled, or annexed to the abbey of *Saint Saviour's*, in *Bermondsey*, and therewith held; that afterwards, in the year 1533, *Robert*, then abbot of the exempted monastery of *Saint Saviour*, in *Bermondsey*, gave the priory of *Monmouth* to one *Richard Tailbuss*, his brother monk, with full licence for him to govern there; that afterwards the said *Richard Tailbuss*, as prior of *Saint Saviour's*, and his convent, enjoyed the same, and granted leases thereof to tenants, as appears more fully by the records and accounts in the alienation office; that at the dissolution of abbeys in the reign of *Henry the Eighth*, the said priory came into the hands of THE CROWN, and remained in THE CROWN until the reign of *Philip and Mary*; that in the fourth or fifth years of their reign, the said dissolved priory, of which the *Priory Wood* was part, was granted to *Gregory Price* and *T. Kerry*, and their heirs, as appears by the grant in the augmentation office; that the said *Gregory Price* and *T. Kerry*, after such purchase, conveyed the same to *Thomas Williams*; that the said *Priory Estate* continued in the name and family of *Williams* by intermediate settlement; and that the several branches of it successively enjoyed the same, together with the said *Priory Wood*, exempt and free from payment of any tithes, and without any demand or suit concerning the same, from the time they were purchased by *Thomas Williams* until the reign of *William the Third*, when there was a fallage of all or part of *Priory Wood*; one *John Williams*, since deceased, being then owner, and in possession thereof; that the said *John Williams*, before his death, sold the same to the defendant; that at that time one *Richard Vaughan* being vicar of *Dixton*, and claiming the tithes of that fallage, brought his bill in this court to impeach the title of the said *John Williams*, he having mortgaged the same; and that the said *John Williams*, instead of defending his right, compounded for the tithes; which is the only instance in which any tithes have ever been paid for the said coppice woods, or other titheable things, happening in *Priory Wood*; and he gave in an account of the fallage of the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the depositions
on

PyE
against
R. & A.

on both sides, and divers proofs in the cause, and on full debate,

IT IS ORDERED BY THE COURT, that the defendant do forthwith account with the plaintiff for the tithes demanded by his bill. And it is referred to the deputy remembrancer to take the same.

In obedience to which order, the deputy made his report, dated the twenty-third of *December* last; and upon reading the said decree and report, and no exceptions filed, it is ordered by the Court, on the first of *February* 1721, that the said report be ratified and confirmed, and that the said defendant do forthwith pay to the plaintiff twenty-nine pounds, nine shillings, and ninepence, for his tithes so reported due, together with his costs to be taxed.

THO. BURY.
RO. PRICE.
JA. MONTAGUE.
F. PAGE.

EASTER TERM,
7. GEO. I.

LEWIS *against* GOLDING.

Wiltshire, 4th May 1721.

The rector of
Chalfeld, in
Wiltshire, is entitled to the tithes
of *Great Chalfeld*
Farm.

THE bill stated, that the plaintiff, for seven years past, had been, and still was, rector of the rectory of *Great Chalfeld*, in the county of *Wilts*, and entitled to all sorts of tithes in kind arising therein; that the defendant, for several years, had occupied a large quantity of land, which he had sown with wheat, barley, rye, hemp, beans, peas, and other grain, or mowed for hay, and had also fed cattle thereon, the tithes of which he had carried away, without giving the plaintiff any satisfaction for the same; that he also fed and depastured on the said lands many cows, from which he had milk and calves, and had also fed thereon several barren cattle and mares, which brought colts; that he also had fows which had pigs, and sheep which had lambs and wool; and that, to defraud the plaintiff of his tithes, he had set up a pretence that his said lands were exempted from the payment of tithes. The bill therefore prayed a discovery, and an account.

The defendant admitted the plaintiff was rector of the said parish, and entitled to the great and small tithes thereof. He said, that he was, and had been for fifty years last past, seised of fourteen acres of pasture ground in the said parish; that during the whole of that time he had never paid any tithes for the same, nor had any ever been demanded, except by one *Mr. Polton* and *Mr. Deacon*; and that they, on his refusing to pay tithes, had brought their bill in this honourable court, but had never proceeded in their suits; and he insisted, that the said lands were

tithes

tithe free, the same having been parcel of the farm called *Great Chalfield*, which was tithe free; but that if the same was titheable, the tithes thereof would not amount to more than five shillings a-year. And he set forth his titheable matters, and the values thereof.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the evidence taken in the cause, and on full debate;

IT IS ORDERED BY THE COURT, that the defendant shall and do come to an account with the plaintiff for all such titheable matters and things as in the bill are demanded, before the deputy remembrancer, who is to take the said account.

HOLDER *against* DAVIS.

Essex, 22d April 1721.

THE bill stated, that for several years past the plaintiff had been rector of the rectory and parish church of *East Hanningfield*, in the county of *Essex*, and was entitled to all great and small tithes arising therein, or to some *modus* or composition for the same; that the defendant, for seven years past, had been, and still was, owner or occupier of divers lands and wood-grounds; that he had yearly hay and corn from the land, and firewood and other wood from the wood ground; that he had sold part of the wood felled, and had made the remainder into charcoal, and afterwards sold the same; that he also rented and had bought other woods and wood grounds, and particularly *Gipeach Wood*; that he had paid some money on account of the tithes of thirty acres of wood; but that, on a pretence that he had over-paid him, he had brought actions to recover it back again. The bill therefore prayed a discovery, and an account for the same.

The defendant admitted that the plaintiff was rector of the parish, and that in one year he had bought of *A. Collins* the under-wood growing in *Gigoriack Woods*, containing about one hundred acres, lying in the parishes of *Hanningfield* and *Purley*, at fifty shillings an acre, whereof twenty-five acres lie in *East Hanningfield*, which he had cut down, and made a great part of the wood into charcoal; that soon after the said wood was felled, and before any part thereof was carried away, he had come to an agreement with the plaintiff to pay ten pounds for the tithes thereof, provided the said wood so lying in the said parish contained thirty acres; and that if it did not, the plaintiff was to refund in proportion; that upon an admeasurement the said wood was found to contain only twenty-five acres; and therefore he had over-paid for five acres, and for which the plaintiff was to refund. He admitted, that in the years 1714 and 1715 he had bought four acres of underwood

LEWIS
against
GOLDING.

The rector of
Hanningford, in
Essex, claims
tithes of *Gigoriack Wood* and
Four Acres.

The defendant
says, he paid
tithes as for
thirty acres, and
the wood con-
tains only twen-
ty-five acres;
that he delivered
the rector thirty
store poles;
that he has
therefore been
overpaid; and
that he had ar-
rested him for
the balance.

HOLDER
against
DAVIS.

underwood in the said parish, which he had felled, and converted part of the wood into charcoal, and had sold and disposed of the other part, the tithe of which he was willing to pay out of the said overplus; and he said, that he had let the plaintiff have thirty *storel poles*, for which he also craved an allowance; and that, on some words happening between them, he had caused the plaintiff to be arrested for the balance, and for the amount of the *storel poles*.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides.

An account ordered to be taken, and the balance to be paid.

IT IS ORDERED BY THE COURT, that it be referred to the deputy remembrancer to take an account of all the tithe woods (not being timber) which the defendant had cut and used in the said parish in the years 1716, 1717, and 1718; and also for the four acres in the years 1714 and 1715; the deputy to allow the defendant for *storel poles*, and for what wood is under thirty acres, which the plaintiff is to repay to the defendant if overpaid; and all actions are hereby stayed till the said report is made.

TRIN. TERM,
7. GEO. 1.

BULL against TILL.

Gloucestershire, 5th July 1721.

The rector of Tortworth, in Gloucestershire, claims tithes of hay, herbage, milk, &c. of Ireland's Farm, Rusell's Farm, and Gory's Farm.

THE bill stated, that the plaintiff, for twelve years past, had been, and still is, lawful rector of the rectory and parish church of Tortworth, in the county of Gloucester, and entitled to all tithes arising therein, or to some composition for the same; that, in the year 1719, the defendant, as tenant to Lord Ducie, occupied therein a farm, consisting of meadow and pasture ground, and other lands; that he mowed the grounds, called *the Great Gortys, the Little Gortys, the Old Hop Yard*, and other grounds part of *Gory's Farm*, and made the grass into hay, which he carried away without setting out the tithes thereof, or making the plaintiff any satisfaction for the same; that during the said year he had also kept several cows, which had produced many calves and much milk; that he had also kept sheep, which had yielded lambs and wool, and had several other titheable things, for all which he ought to have paid the plaintiff tithes in kind, or made some composition; but that, instead of so doing, he pretended that his said farm and lands were exempted from the payment of tithes, or that he had made an agreement with the plaintiff for the same, although several of the parishioners had quietly paid the tithe of their milk in kind. The bill therefore prayed an answer, and an account.

The

The defendant admitted that the plaintiff was rector of the parish, and entitled to all tithes arising therein, or to some *modus* or composition in lieu thereof; but said, that both he and his predecessors had, until very lately, constantly accepted and taken twelvepence in the pound as an ancient composition or *modus* according to the rents of the several estates of the inhabitants, in lieu of the tithes arising thereon; which payment had been commonly called "*the pound shilling*." He admitted, that in the said year he had occupied, as tenant aforesaid, two farms, the one called *Ireland's*, at forty pounds a-year, and the other called *Russell's*, at twenty-five pounds a-year, and also a farm, called *Gory's Farm*, at one hundred and ten pounds a-year; and he set forth the several titheable matters which had arisen upon the farms called *Ireland's* and *Russell's*, and the value thereof. He also admitted, that in the said year he had mowed several closes of ground, part of *Gory's Farm*, and had kept on his several farms promiscuously several milch cows, which had produced several calves; that about ten calves had fallen on *Gory's Farm*: and he set forth the quantity of milk he had had from the said cows. He also admitted, that he had taken in, by way of agistment, upon *Gory's Farm*, and upon part of his other farms, several sheep, for which he was paid twenty pounds as the full value of the herbage for depasturing the same. He said, that in the said year he had paid to the plaintiff, in lieu of the tithes arising on the farms called *Ireland's* and *Russell's* three pounds, four shillings, being twelvepence in the pound, according to the yearly rent which he paid for them, and which the plaintiff had accepted in full satisfaction for all tithes arising thereon. He admitted, that he did not set out the tithes arising on *Gory's Farm*, his agreement with *Lord Ducie*, his landlord, being, that the said *Lord Ducie* should discharge the same, he having either accepted of some lease of the tithes, or come to some agreement with the plaintiff in relation thereto. He said, that the plaintiff, until *Midsummer* 1719, had never made any pretence to tithes in kind; that he then told the defendant, that for that year he need not set out his tithes, for that he would not gather them in that year in kind; that having no subsequent notice of his intention to take the same in kind, he had refused to permit him to take the tithe of milk for the beginning of the year 1720; but that, on the second of *April* 1720, finding that the other parishioners paid their tithes of milk in kind, or compounded for the same, he had offered the plaintiff his tithe milk, which he neglected to send for until the twenty-sixth of the said *April*, when he took the said tithe milk, and had ever since taken the same in kind; that not knowing how far any agreement between the plaintiff and *Lord Ducie* might discharge him from paying the tithes of *Gory's Farm* according to the composition or *modus* of twelvepence in the pound, he had several times before *Lady Day* 1720 offered the plaintiff twelvepence in the pound, in lieu

BULL
against
TILL.

The defendant says, that there is a *modus* or composition of 12d. in the pound, called *the pound shilling*, payable in lieu of the tithes of *Ireland's* and *Russell's*;

that he did not set out the tithes of *Gory's Farm*, because his landlord had agreed with him to pay the same.

of

BULL
against
TILL.

of all tithes due to him at *Michaelmas* 1719 ; and that, on the fourth of *April* 1720, he tendered the same for all the tithes of *Gory's Farm* for the year 1719 ; that for the tithe of milk he had been desired not to set it out between the twenty-fifth of *March* 1720 and the twenty-sixth of *April* following ; and that, from the said twenty-sixth of *April*, he had permitted the plaintiff to take the tithe of milk in kind.

The plaintiff replied ; the defendant rejoined ; and several witnesses were examined on both sides ; and upon reading several proofs, and on full debate ;

The bill dismissed as to *Ireland's Farm* and *Russell's Farm*, and the tithes of *Gory's Farm* decreed.

IT IS ORDERED BY THE COURT, that the bill, so far as it relates to *Ireland's Farm* and *Russell's Farm*, do stand dismissed ; but as to *Gory's Farm*, this court doth order and decree, that the said defendant shall account with and satisfy the plaintiff for the value of the tithe hay, and all other the tithes which did, in the year 1719, arise and grow due to the plaintiff from the defendant upon the said farm and lands, called *Gory's Farm*, as also of his tithe milk from the twenty-fifth of *March* 1720 to the twenty-sixth of *April* following ; the taking of which account is hereby referred to the deputy remembrancer, who, in taxing the costs for the plaintiff, is to consider the charge of the defendant's examination and proceedings relating to the tithes of the farms called *Ireland's* and *Russell's*.

Pursuant to which order, the deputy made his report, dated the twenty-third of *November* last ; and upon reading the said decree and report without exceptions, and no counsel appearing for the defendant ;

IT IS ORDERED BY THE COURT, on the seventh of *December* 1721, that the said report be, and is hereby allowed and confirmed ; and that the said defendant do forthwith pay to the plaintiff twenty pounds, two shillings, and fourpence, reported due to him for the several tithes and titheable matters and things in the said report mentioned, together with his costs of this suit, to be taxed as above stated.

THO. BURY.
RO. PRICE.
F. PAGE.

TRIN. TERM,
7. GEO. 1.

GREENSLADE against BAKER.

Somersetshire, 12th June 1721.

The plaintiff says, that he purchased the inheritance of the tithes of *Larcombe Farm*, in *Cuscombe*, in *Somersetshire*, and let the same to the defendant, the tenant of the said farm, and afterwards gave him notice to tithe in kind.

THE bill stated, that the plaintiff, being entitled to the inheritance of the great tithes of *Larcombe Tenement*, in the parish of *Cuscombe*, in the county of *Somerset*, in the possession of the defendant, let the tithes to him, who enjoyed the same ;

that

that the plaintiff, for two years past, had acquainted him, that unless he would give him more for the said tithes, he would take them in kind, which he opposed. The bill therefore prayed an account for the same.

GREENSLADE
against
BAKER.

The defendant admitted, that he had for many years, in his own right, the possession of the said tenement, and had yearly ploughed and sowed some part of the ground with corn and grain, as oats and barley mixed, which sowing is there called *dredges*, and with but little wheat or other grain; that the tithes have been usually let at ninepence, and at the highest not exceeding twelvepence; but the quantity of corn or number of acres he had yearly sown he could not set forth. He said, that he believed the plaintiff did purchase the inheritance of the great tithes of the said tenement; and that he had agreed with him for the same about three years ago; to which time the plaintiff had received the tithes: and he set forth the quantities of his wheat and corn tithes; and denied that he had ever obstructed the plaintiff from receiving the same, but had regularly sent him the money according to the agreement, which he had refused to accept, unless he would relinquish all demands upon him for the *bound trees* which he had cut in *Killner's Woods*.

The defendant says, that he tendered the money for the tithes, according to the agreement.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff; and upon opening the bill, and reading an affidavit of the service of *subpœna* to hear judgment; and on reading the answer; and no counsel appearing for the defendant;

The defendant neglects to attend the hearing.

IT IS ORDERED AND DECREED BY THE COURT, that the defendant do account with and satisfy the plaintiff for the value of the tithes in kind of the corn and grain, and other titheable matters, arising, &c. upon the lands in question in the defendant's possession during the time in the bill mentioned; and it is also referred to the deputy remembrancer to take the account, unless cause be shewn to the contrary, the said defendant first paying five pounds costs before he be heard.

The tithes in kind decreed.

On the ninth of *November 1721*, upon reading the said order, and no counsel attending for the defendant,

IT IS ORDERED BY THE COURT, that the said decree be, and the same is hereby made absolute.

The deputy having made his report, dated the eighth of *February 1722*, the order and report were read; and no counsel appearing for the defendant;

The report made and confirmed.

IT IS ORDERED BY THE COURT, on the twenty-first of *February 1722*, that the said report be, and the same is hereby ratified and confirmed; and that the said defendant do forthwith pay to the plaintiff five pounds, thirteen shillings, so

GREENSLADE
against
BAKER.

reported due to him for his said tithes, together with his costs to be taxed by the said deputy remembrancer.

RO. PRICE.
JA. MONTAGUE.
F. PAGE.

TRIN. TERM,
7. GEO. I.

HATHWAY against EDWARDS.

Herefordshire, 26th June 1721.

The vicar of
Bodenham, in
Herefordshire,
claims tithes in
kind.

THE bill stated, that the plaintiff, in the year 1710, was instituted and inducted vicar of the parish and parish church of *Bodenham*, in the county of *Hereford*, and entitled to all small tithes, as also to the tithe of a third part of the corn, and the tithe of all the hay within the said parish and the titheable places thereof; that the defendant had been, for two years, an inhabitant of the parish, and had held and occupied land therein; that he had kept many cows, which had calves; and sheep, which had lambs and wool; that he had also many dry and unprofitable cattle; and many acres of hop ground that produced hops; that he also had orchards, which produced apples, pears, crabs, and other fruits; that he had honey and wax, and hives of bees; many pigeons, poultry, eggs; great quantities of hay, corn, flax, hemp, wood, and other titheable matters of great value, which he had carried away and converted to his own use, without setting out the tithes thereof, or making any recompence for the same, on a pretence that the premises are discharged from the payment of tithes. The bill therefore prayed to have a full discovery of the quantities, qualities, and values of the same, and an account for them; and his *Easter* offerings.

The defendant says, that there is a *modus* of 1d. a cow in lieu of tithe herbage, and 1d. a garden in lieu of tithe fruit and vegetables; and that he had no pigeons but what were eaten by the family; nor any cattle but what were bred for the plough or pail.

The defendant admitted that the plaintiff was vicar, and as such entitled to all small tithes; and that, in the said years, he was an inhabitant there, and had occupied several acres of meadow and pasture; and he set forth the number of cows, calves, wool, and lambs which he had in the year 1717, which he said were kept, &c. sometimes in the parish of *Penkham*, and sometimes in *Bodenham*; that the plaintiff being minister also of *Penkham* parish did set to the defendant all his tithes arising therein for the said two years, at the yearly rent of fifty-five shillings, which he had paid to him, and he had accepted the same; that in *Bodenham* parish there had been immemorially an ancient *modus* of a penny for every cow depastured in that parish, to be paid at *Easter* yearly to the vicar, and to be by him accepted in full for tithe milk and calves; but that he, the defendant, had paid him three halfpence for each calf, not knowing of the said *modus*, and which he had tendered to the plaintiff for the said years, but that he had refused to receive the same; that for the year 1717 the plaintiff took his tithe hops

HATHWAY
against
EDWARDS.

hops in kind, but had refused to take them in the year 1718, though justly set out; that he knew not the quantity of fruit he had in the said years, but that the tithe thereof was duly set out, and that the plaintiff had taken away the greater part of the same, and left the remainder; that in the said years he had set forth his tithe hay and pigs; that he reared and depastured a few yearlings and two year old heifers and bullocks, for which, he insisted, he ought not to be accountable for tithes; that he had not kept any dry and unprofitable cattle; and that the said yearlings and heifers were kept for the plough and pail; that he had no honey nor geese in the year 1717; and that for the year 1718 he had tendered to the plaintiff his full tithe for the same, as well as for his poultry; that he also had one colt fallen in *Bodenham*, for which he had paid the plaintiff his tithe, as also for his bees wax; that he had one year with another nine dozen of pigeons, but never sold any; nor during that time ever felled any coppice or other titheable wood, except what he spent in his house, for which there had been a *modus* time immemorially paid to the vicar for the wood so spent; that in the year 1717 the plaintiff received one penny for the said wood, but in the year 1718 had refused the same, though it was duly tendered him by the defendant; that he had constantly paid the tithes of the corn and grain he had, or a sum of money in lieu thereof, to one *J. Mason*, who rented the same of *Lord Coningsby*, and which the plaintiff had never demanded, except by the present bill; that he had, in the said years, no flax nor hemp; and for the year 1717 had paid the plaintiff for *Easter* offerings for himself and family, fourpence, which he received; that in *Bodenham* parish there had been, time immemorial, a *modus* or customary payment of one penny for each garden in the said parish, payable at *Easter* in every year to the vicar, which ought to be accepted in full of the tithes or tenths of all garden herbs and other things growing therein, which the plaintiff had received for the year 1717, but refused to give the defendant a receipt for the same; that for the year 1718 the plaintiff had refused to accept the said *Easter* offerings and garden penny, and one penny for the wood, though duly tendered; and that he had no other titheable matters.

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and upon reading the proofs taken in the cause, and on full debate;

IT IS ORDERED BY THE COURT, that the defendant shall and do forthwith come to an account for the tithes demanded by the bill before the deputy remembrancer of this court (except for the tithes of pigeons spent, and not sold, and young cattle reared for the plough and pail), with costs to be taxed; to whom it is referred to tax the said costs, and take the account.

The tithes, except of the cattle and pigeons decreed.

TURTON *against* CLAYTON ; *et è Contra.*

Lancashire, 22d June 1721.

The rector of *Standish*, in *Lancashire*, claims the great and small tithes of the whole parish in kind.

S. C. Bunb So.

THE bill stated, that the plaintiff, in the year 1713, was presented to the rectory and parish of *Standish*, in the county of *Lancaster*, and duly inducted thereupon ; and that he and his predecessors, of common right, had received all manner of tithes, as well great as small, together with all oblations, offerings, dues, and titheable matters whatsoever growing, &c. therein, or in the titheable places thereof, or some satisfaction for the same ; that the defendants, for five years last past, had been inhabitants and parishioners therein, and enjoyed to their own use several messuages, lands, and tenements, which had been constantly stocked with cows, kine, sheep, horses, and other cattle, which produced milk and calves, and that the plaintiff ought to have had tithes in kind, or some annual composition for the same ; that they also had quantities of hay, the tithes of which, and all other great and small tithes, ought to have been paid in kind to the plaintiff, as well as his *Easter* offerings, and the tithes for gardens, orchards, fruits, herbs, and agistment of cattle, or some rate or composition for the same ; all or any of which the said defendants had refused to pay. The bill therefore prayed an account, and satisfaction for the said tithes.

The defendants say, that the plaintiff sought to set forth his title to the tithes ; and insist, that there are *modus*es payable for certain articles ;

The defendants said, that they believed the plaintiff was, in fact, rector or incumbent of the rectory or parish aforesaid ; that, in the year 1713, he was duly inducted thereto, but in what manner they knew not, though they believed it was by means not justifiable, and that therefore the plaintiff sought to make out his title. They also said, that there is, and hath been, a custom and usage in the said parish, time out of mind, that certain *modus*es or customary sums of money have been constantly paid by every parishioner of the said parish yearly to the rector or incumbent thereof for the time being, or to his order, or for his use, in lieu of tithes in kind for houses, hay, hens, yards, bees, colts, milch cows, calves, yarrow cows that give milk, receipts, and offerings for husbands, wives, children, and servants above sixteen years old, within the said parish, and for mortuaries, according to the statute 21. *Hen.* 8. ; that yearly, for all the time demanded by the bill, they had paid to the plaintiff tithes in kind for all corn, grain, wool, lambs, pigs, and geese, or some satisfaction for the same.

and by their further answer they set forth the several *modus*es.

To which answer the plaintiff took exceptions, and the defendants put in a further answer, setting forth the several *modus*es following, *viz.* threepence yearly by every parishioner to the rector or incumbent, in lieu of all manner of tithes arising, &c. due and payable for all and every his, her, and their house and houses, yard and yards, and hay growing, and hens kept

kept within the said parish, *viz.* for the tithe of every house, one penny; for hay, one penny; for hens, one halfpenny; and for the fruit and other titheables arising and renewing upon or from every yard within the said parish, one halfpenny; that it is vulgarly stiled, for house, hay, hen, and yard, threepence; that the said sum had been always accepted for the same; and that tithes in kind have never been paid for them (a); for every swarm of bees, one halfpenny; for every milch cow, one penny; for every calf and calves reared within the said parish in one year, and brought to the butcher, one halfpenny, if under seven; or if seven or more, but under the number of seventeen, then five shillings; or if seventeen, then ten shillings, and so on in like proportion, five shillings for the increase of every ten in number above the number of seven reared in one year, or brought to the butcher: for every farrow cow that gives milk, one penny a-year for every such year she has no calf; and for every year she has a calf, one penny: for every colt foaled within the said parish, one penny; which said sums had, time out of mind, been paid to, and accepted by, the rectors or incumbents for the time being of the said parish, in lieu and full satisfaction of the several particulars last mentioned; so that tithes in kind had never been paid for the same: for every seventh pig, having seven or above and under seventeen, one pig; for every seventeenth pig, having seventeen or above and under twenty-seven, two pigs; and so on, according to that number and proportion, for every tenth pig above the number of seventeen; and that the like custom had been observed as to lambs, geese, and wool; which said several proportions and quantities in kind of the particulars last mentioned had been, time out of mind, received and taken by the rectors and incumbents of the said church in full satisfaction (unless when otherwise by agreement to the contrary). They also said, that they believed that the rector was, and immemorially had been, entitled to tithes in kind of all corn and grain growing, &c. within the said parish, and to all other tithes, as well great as small, and to all other rectorial dues within the said parish, of common right due and payable (except as before and hereinafter set forth); which several particulars had been paid, *viz.* for mortuaries within the said parish, according to the statute 21. Hen. 8.; that for all receipts and offerings therein there was and is due and payable, and time out of mind had been paid, to the rector or incumbent there for the time being, by every parishioner thereof, the several sums following, *viz.* for man and wife, threepence; for the

TURTON
against
CLAYTON;
et c. Contra.

(a) It is said, that the whole Court were of opinion, that this is a void *modus*, taking it either distributively or entirely; for as to the hay, one penny is unreasonable; for if a man has sixty acres of hay, he pays only one penny; and if he lets them to sixty several per-

sons, they shall pay one penny a-piece. And by MR. BARON PAGE, If a man should declare in debt for an entire rent of sixpence, *viz.* twopence for *Black Acre*, twopence for *White Acre*, and twopence for *Green Acre*, this would be bad. S. C. Bunb. 81.

TURTON
against
CLAYTON;
et al. *Contra*.

They also insist, that no tithes are due for the depasturing of dry, barren, and unprofitable cattle, for that the rector enjoys certain lands in lieu thereof.

the children and servants of every parishioner above sixteen years of age, each one halfpenny; for the marriage of every parishioner within the said parish, five shillings to the rector; and to the parish clerk, if it be by licence, one shilling, and if published, tenpence; for every offering when a woman is churched within the said parish, fourpence to the rector, and to the parish clerk, twopence; for every funeral within the said parish, fivepence to the rector, and to the parish clerk, fourpence. They also said, that no other tithes or rectorial dues therein had ever, in any man's memory, been paid or satisfied otherwise than as afore-said, or any demands made thereof before the plaintiff's time. They also stated, and insisted, that they had never paid any tithes for agistments or depasturage of dry, barren, and unprofitable cattle within the said parish, either to the plaintiff or to any of his predecessors; neither had they ever heard that any tithe for the same, or any sum of money in lieu thereof, had ever been paid within the memory of man, or that any thing is due to the rector for the same; for that the rector of the said parish for the time being had, time out of mind, been seised of and entitled to certain closes and parcels of ground in the said parish, as set forth in their answer; which may be a reason why the plaintiff is not entitled to such tithes for agistment or depasturage of dry, barren, and unprofitable cattle. They also stated, that for five years past they had possessed several messuages and lands; and that they had, in every year during the said term, paid the tenth part of all their corn and grain to the plaintiff, and also their several and respective tithes for all their said other titheable matters before mentioned (except the defendant *Bradshaw*, who did not pay tithes for a small parcel of potatoes, but tendered the plaintiff three shillings for the same, which he refused to accept, and a small matter for *Easter* dues, which amounted to tenpence halfpenny; and he was ready to pay the same according to the said customs). They also said, that they never had refused to pay or satisfy any rectorial dues or compositions for the same, according to the usage and custom before set forth.

The plaintiff waives all claim, excepting to the tithes of hay, agistment, and potatoes.

The defendants file a *cross bill*, stating, that the rector enjoys certain lands in fee, and a cottage rent.

To which answers the plaintiff replied specially, viz. only as to the tithes of hay, agistment of cattle, and potatoes, and waived all other his demands made by his said bill.

Sir T. Standish, Bart. and others, filed their *cross bill* against the plaintiff *Turton*, clerk, setting forth, that the rectors and parsons of the said parish of *Standish* for the time being have, time out of mind, been seised in fee to them and their successors, as rectors of the said parish and parish church, of and in certain closes and parcels of ground within the said township of *Standish cum Langtree*, and within the said parish, as mentioned in the said bill, as also several messuages, cottages, and dwelling-houses, with their appurtenances, and the ground thereunto belonging;

belonging, and let to several people in the said bill named, and of a rent of five shillings chargeable upon a certain cottage; and that they or their undertenants have held and enjoyed the same, and received the rents, issues, and profits thereof, together with the said rent charge of five shillings during the time aforesaid: the rest of the bill was to the same effect as the defendant's answer to the original bill.

TURTON
against
CLAYTON;
et c. Contra.

The rector answered, and admitted, that the rectors and parsons of the said parish had, time out of mind, enjoyed and been seised of, to them and their successors, as rectors of the said parish, of and in the closes and parcels of ground in the bill mentioned, but upon what grounds and reasons he knew not, and of several other parcels of ground, as also of the rent of five shillings (except two cottages). He also admitted, that he and his predecessors, or their lessees or tenants, have had and received the rents and profits of the said premises; and he said, that he believed there is, and, time out of mind, had been, within the said parish, payable to the rector or incumbent thereof, by every parishioner within the said parish, a certain *modus* or customary yearly payment of threepence for and in lieu of the titheable matters set forth in the bill, except for the tithe of hay, which he believed is not included therein; and he denied that there are no other tithes and dues payable to the rector but what are set forth in the bill; for he insisted, that all manner of tithes arising (except as are set forth in the defendant's answer) in the said parish and the titheable places thereof, are due to him, and particularly the tithes of potatoes growing in the open fields, which are a new increase in the said parish, and for which he is entitled to tithes in kind, or to some satisfaction in lieu thereof. He also insisted, that he is entitled to the tithes of the agistment and depasturing of dry, barren, and unprofitable cattle within the said parish.

The rector admits, that the said lands and cottage rent belong to the rectory, but knows not on what account; and says, that there is a *modus* of 3d. a year is lieu of the tithes stated in the bill, excepting of hay, agistment, and potatoes.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined on both sides in the original cause; but the depositions were, by an order of court, dated the twenty-eighth of November 1720, ordered to be read in both causes; and upon reading the said order, and the several proofs taken in the cause,

THE COURT declared, that the *modus* or customary payment for tithe hay in the pleadings mentioned is not good, and ought not to be established; and thereupon ordered, that the defendants in the original cause shall account with and satisfy the plaintiff for the tithe of all the hay which they have respectively had or made within the said parish of *Standish*, or the titheable places thereof, for the several years in the bill mentioned; and also for the agistment or tithe herbage of all dry, barren, and unprofitable cattle by them respectively depastured on the premises

The *modus* for tithe hay decreed to be void;

See Bunb. 81.

and the defendant ordered to account for the tithes of hay, agistment, and field potatoes.

TURTON
against
CLAYTON;
et c. Contra.

mises during the time aforesaid; and likewise for the tithes of all potatoes which the defendants had within the same time growing on the said premises sown in the fields, and not in old gardens; and it is referred to the deputy remembrancer to take the account.

The cross bill
dismissed.

AND IT IS FURTHER ORDERED, that the said cross bill be, and the same is hereby dismissed with costs to be taxed by the said deputy for the defendant *Turton*.

RO. PRICE,

TRIN. TERM,
7. GEO. 1.

HANKIN against FOTHERINGHAM.

Lincolnshire, 6th July 1721.

The rector of
Holbeach, in *Lin-*
colnshire, claims
the tithes of cer-
tain marsh
lands.

See *Hankin v.*
Gay, ante, 94.

THE rector of *Holbeach*, in the county of *Lincoln*, claimed the values of the tithes for six years past, of all sorts of corn, grain, hay, wool, lambs, flax, and of other titheable matters and things yearly arising, &c. upon two hundred acres of marsh lands, lying within the rectory and parish of *Holbeach*, and in the possession of the defendant, by virtue of two several leases thereof to him and his heirs, made, the one by the then *Bishop of Lincoln*, dated the twenty-second of *August 1713*, for three lives, and the other lease, being surrendered, made by the present *Bishop*, dated the twenty-ninth of *May 1718*, also for three lives, and which lives are now living; the plaintiff *P. R. Peirson*, as son and heir of *R. Peirson*, deceased, claiming the reversion of the said rectory and tithes, subject to a mortgage of a former lease thereof to *Richard Lord Gorges*, deceased, and which former lease was legally assigned to the plaintiff *Hankin*.

The defendant
says, that if tithes
are payable, there
is a *modus* month-
ly of one fleece
for every 120
sheep depastured
between *Candlemas* and *clipping day*;

The defendant admitted the plaintiff's title to the rectory and tithes; and set forth, amongst other things, what quantities of corn he had on one hundred and fifty-five acres of new embanked lands within the said rectory yearly for three years past; and what sheep he had yearly depasturing thereon; but insisted, that he had had no wool thorn or lambs yeaned on the said lands within the said parish in the said years; and that if tithes were due for such sheep, then, by custom within the parish, there ought only to be paid, in lieu of tithes of the said sheep, one fleece of wool, or the value thereof, for every one hundred and twenty sheep brought into the said parish after *Candlemas* for every month the same had been depastured within the said parish until *clipping day*; and so in proportion for a greater or less number, or a longer or shorter time; but he insisted, that no tithes ought to be paid for the said lands, the same having been embanked at great charges in 1616, and being before that time waste and barren ground, and of no value or profit, and therefore ought not to pay tithes for seven years after the im-

but insists, that
as the lands had
been embanked,
they were ex-
empted from
tithes for seven years, by the equity of 2. & 3. *Edw. 6. c. 13. s. 5.*

the

banking thereof, such lands being exempt from tithes by the equitable construction of the statute of the 2. & 3. *Edw.* 6. c. 13. f. 5.

HANKIN.
against
FOTHERING-
HAM.

The plaintiff replied; the defendant rejoined; and several witnesses were examined; and upon opening the bill, and reading an order of court, dated the ninth of *May* last, whereby the defendant was ordered to appear gratis at the said hearing, and reading the defendant's answer, and no counsel attending for the defendant;

The evidence
read.

IT IS ORDERED BY THE COURT, that the defendant shall account with and satisfy the plaintiff for the values of the tithes in kind, of the corn, grain, and other titheable matters and things had by the defendant on his said lands in the said years demanded by the bill; which decree was afterwards made absolute on the twenty-sixth of *November* 1721.

The tithes de-
creed.

FRANKLYN *against* THE MASTER BRETHREN OF
ST. CROSS, NEAR WINCHESTER and Others.

TRIN. TERM,
7 GEO. 1.

Southampton, 15th June 1721.

THE bill stated, that the master and brethren of *St. Cross* had, for several hundred years, been seised of the rectory impropriate of the parish and parish church of *Fareham*, in the county of *Hants*, and had, time out of mind, enjoyed all tithes rightfully thereunto belonging, or some *modus* or composition in lieu thereof; that the said corporation did, by lease, demise the said rectory and tithes to *W. Bennet*, for a term of years yet to come, by which he claimed and enjoyed the said rectory and tithes; that the vicarage is endowed, and the endowment in the custody of the confederates; that the defendant *Jenkins* had been vicar about twenty-seven years past; that, time beyond the memory of man, there had been and are divers *moduses*, customary payments, exemptions, and discharges from the payment of certain tithes in kind, founded upon *real compositions*, and other good, substantial, real, and valuable foundations; that is to say, for and in lieu of the milk or white sole of every cow yielding milk, twelpence yearly; for every calf killed or sold, sixpence (*a*); for every weaned calf, one penny halfpenny; and for every colt weaned or sold there, one penny halfpenny; for all fruits, herbs, and roots in any ancient garden belonging to an ancient messuage, one penny yearly; and one penny yearly by every inhabitant keeping domestic fowls, in lieu of the tithes of them and of the young fowls thereof; for every sheep brought into the parish, at or after the twenty-fifth of *March*, and shorn the same year, in lieu of tithe wool, one penny, or half the tithe wool only, and no more. The bill further stated, that no tithes in kind had

The plaintiffs,
as inhabitants of
Fareham, in
Hampshire, insist
on certain *moduses*
in lieu of the
tithes of milk,
calves, colts, gar-
den stuff, poul-
try, sheep, and
wool;
S. C. Bunb. 78.

and state that
the impropriator
enjoys a parcel
of wood;

of land called *Compound Croft*, in lieu of the tithes of

(a) These two *moduses* were adjudged void as being too rank. S. C. Bunb. 78.
been

FRANKLYN
against
THE MASTER
AND BEE-
THREN OF ST.
CROSS, NEAR
WINCHESTER
AND OTHERS.

and that there
are only 4d. for
a whole family
payable in lieu
of *Easter* offer-
ings ;

that both the
impropriators
and vicar claim
the tithes of hops
and grasses ;
that burial fees
are due to the
churchwardens ;
Ante, 114.

and that the vicar
refuses to find
sacramental
bread and wine.

The vicar states,
that the impro-
priators of the
rectory are en-
titled to all the
corn tithes there-
of, excepting of
thirty acres cal-
led *Caines*, and
four acres called
Polly's Croft, and
to the tithes of
lambs, pigs, and
geese ; that by
endowment in
1440, the vicar
is entitled to all
vicarial tithes,
excepting of
lambs, pigs, and
geese ; that he
became vicar
in 1689, and
not being able to

been paid for coppice-wood, or wood felled or cut there, but that, time beyond the memory of man, wood had been sold, felled, cut, and carried away without any tithes ever having been paid or demanded for the same ; for that a parcel of land called *Compound Croft*, otherwise *Pouly's Croft*, was given and granted to the impropriator, parson, or vicar of *Fareham*, for the time being and his heirs and successors for ever, in lieu and full satisfaction of the tithes of all coppice-wood, and other wood grown and cut within the said parish. It also stated, that every master of a family, time beyond the memory of man, had yearly paid for *Easter* offerings, for self and the whole family, fourpence and no more, which had been constantly received without any further demand being made of or for *Easter* offerings ; all which *modus*es the plaintiffs hoped they should have enjoyed, but that the defendants endeavoured to break through the same. The bill further stated, that the defendant *Jenkins*, as vicar, had demanded and sued for the tithes of hops, clover-seed, and other seeds of grass, and of vetches ; and that the other defend-ants had also demanded them, and therefore the plaintiffs did not know to whom the same ought to be paid. It also stated, that the vicar had demanded and exacted duties for burials in the church and church yard, though if any were due, they were due by custom, beyond the memory man, to the churchwardens, because the inhabitants repair the fences of the said church yard. It also stated, that he had refused to find bread and wine for the sacrament of the lords supper, al-though by the endowment of the said vicarage, he ought so to do. The bill therefore prayed, that the defendants may an-swer the bill and the plaintiffs be relieved,

The defendant *Jenkins* said, that the masters, &c. of *St. Cross* now are, and for some hundred years have been seized of the rectory impropriate of *Fareham*, and of all the tithes men- tioned in the composition, agreement, or endowment, dated the twenty-first of *April* 1440, kept in the bishop's registry of *Winton* ; that pursuant thereto the tenants and farmers of the said rectory have received the tithes of all corn, except of thirty acres called *Caines*, and four acres called *Polly's Croft*, and the tithes of lambs, pigs, and geese ; and that the defendant *Bennet*, the present lessee, had received such tithes ; that ever since the composition, the vicar had received, or ought to have received all vicarial tithes (except of lambs, pigs, and geese) par- ticularly hops, and divers sorts of grass and seeds of grass, which in their nature are small tithes, and that he had enjoyed the same ; that the tithes of wood, milk, and cheese, had been unlawfully detained from him ; that he first came to be vicar in the year 1689, and that no vicarial tithes, except fruit, had been taken in kind ; and that he, for want of a barn and takes his tithes in kind, for want of a tithe barn, he was obliged to compound yearly.

other

other conveniences was forced to agree for the tithes as he could, so that there was not any *modus* or fixed rate, but all titheable matters were lumped together, and so it had been proved in a former cause between the defendant and *Fussel*; that the defendant, before he could get a barn, &c. did as well as he could; and that the parishioners did not pay according to any *modus*, or constant usage (except three) who paid for every calf sold, the tenth penny or shilling, which was from sixpence to three shillings; if killed, some the shoulder, but generally the tenth of what it was worth; if weaned some times more or less as they could agree; that as for the tithe of milk the defendant, for quietness sake, and for his subsistence, until it could be determined by the Court, accepted of twelpence, which is not one third part of the value; that they all paid the full tithes of sheep and wool for several years, or the values in money; that they likewise paid twopence a head, by way of composition, and not as a *modus* for the agistment of all sheep that were brought out of other parishes to be wintered; and for composition of horses let or worked for hire, and for horses not employed in husbandry, the tenth shilling, when depastured in the stubbles and after-grass; if otherwise two shillings in the pound, for all grounds rented for that purpose; that they paid the tithe of meadow and all other grass in kind, or compounded for the same as they could agree; that the plaintiff *Grossmith* hath so done, and, since the bill, had paid two years tithes of cinquefoil seed; but that when they paid grass in kind they compelled him to take it in grass cocks; that they paid and agreed to pay for the seed of clover, cinquefoil, trefoil, and rey-grass yearly, or the full value thereof (deductions being first made for threshing and cleaning); but that the tithes of till, buck wheat, horse beans, and vetches are wholly detained from the defendant though they belonged to him; that all persons paid him tithes of hops, and that the plaintiff *Franklyn* did so till the year 1713, and then agreed to pay five pounds, seven shillings, and sixpence for all his tithes (except wood), but had not paid one penny since; that those likewise who had honey, wax, fruit, and fatting beasts paid tithes for the same, either in kind, or in money more or less; that every married couple paid for *Easter* offerings sixpence, and divers single persons twopence a-piece yearly, which is due for all aged and above sixteen; that the tithes of eggs are due in kind; and the tenth shilling in value for a colt when weaned; that he never received any thing for either colts or eggs of young and domestic fowls, nor has he ever heard that his predecessors did, unless in gross amongst other tithes; that the vicarage was anciently endowed with tithe wood by the endowment, and that, as he believed, it was now due; for that he did not know that the close of land called *Compound Croft*, otherwise *Pouly Croft*, was given in lieu of the tithes of wood, nor did he know, that there are, or ought to be any exemptions or *modus* whatever

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AND BRE-
THREN OF ST.
CROSS, NEAR
WINCHESTER
AND OTHERS.

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THEN OF ST.
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whatever in lieu of tithes within the said parish, and he hoped that no such should be now established. He insisted, that all vicarial tithes are due to him in kind, except the tithes of lambs, pigs, and geese, which belonged to the impropiator; that he constantly demanded and received for burials of every person, whether parishioners or strangers, in the church-yard, twelvepence, and in the church, six shillings and eightpence; and if vagrants, the proper officers paid the fees till of late, and that he has a just right to the same, the soil being the freehold of the minister, though the repairs were done by the parishioners; that as to the charge of refusing to provide bread and wine for the sacrament, he submits whether by the said endowment he is obliged to do so.

The lessee of the great tithes says, that there are such *modus*, and insists on the tithes of hops, clover, vetches, horse-beans, buck-wheat, and tills, they not being specified in the endowment.

The defendant *Bennet* admitted, that the master, &c. of *St. Cross* are and have been seised of and in the rectory impropriate, and that they their tenants and farmers are well entitled to all tithes, both great and small, as well predial and personal as mixed, of all titheable matters and things therein, except such tithes as the vicar is entitled to by his endowment, and except such as are covered by any *modus* or customary payment in lieu of tithes; and that he is lessee under the said master, &c. of the said rectory, for lives, under whom he and his ancestors have held the same for some hundred years past. He said, that he believed that there are, and have been time beyond the memory of man, such *modus* and customary payments in lieu of tithes; and he denied, that he had endeavoured to break through the same; but he insisted, that, as lessee, he is entitled to the tithes of all hops, clover-seed, and the seeds of other grass and vetches, inasmuch as they are not mentioned in the said endowment; and that in case the vicar shall prevail in his demands of tithes of hops, clover-seed, and other grass-seeds, of vetches and of horse-beans, buck wheat, and tills, the said hospital will be in a great measure disinherited and want support.

The impropiators admit that *Bennet* is their lessee, and that *Jenkins* is vicar; that the vicarage is endowed; and insist on all tithes but those which are given to the vicar by the said endowment.

The master, &c. answered and said, that they are, and their predecessors had, in their politic capacity, been seised in their *demesnes as of fee* of and in the rectory impropriate of the parish and parish church of *Fareham*, and of all tithes and tenths thereunto belonging, or to some *modus* or composition for the same, and that their tenants and farmers ought to hold and enjoy the same in like manner. They said, that they believed the said vicarage is a vicarage endowed, but what it is endowed with they cannot set forth, they not having seen the same. They admitted that the defendant *Jenkins* is vicar, but how long he had been so they said they knew not, nor whether, time out of mind, or by any other manner, there had been or are such *modus*, customary payments in lieu of tithes or other compositions, as in the bill are mentioned, nor that the said close was given in lieu of tithe wood, or that there had been paid or is payable any tithe

tithe for coppice-wood or other wood. They admitted, that the impropriation had been for many years demised by them and their predecessors to *Bennet* and his ancestors for lives, and was now in him by lease, dated the twenty-second of *May* 1718; and that the same having been in lease so many years they cannot set forth the manner of tithing, or the customs or *modus*es in the said parish; but they insisted that they are entitled to the inheritance thereof, and to all tithes arising therein, whereof the said vicar is not endowed, and to all legal *modus*es, compositions, and agreements for the same; and they hoped the Court would take care of and protect their rights.

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AND OTHERS.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the endowment, dated the twenty-first of *April* 1440;

The endowment read.

THE COURT declared, that the tithes of hay, clover, and cinquefoil do belong to the vicar and not to the rector.

The tithes of hay, clover, and cinquefoil, decreed to the vicar; that no tithes are due for feeding cattle on stubble-ground;

AND ALSO, that no tithes are due for the agistment or depasturage of cattle upon stubble grounds or after pasture, for which tithes have been paid.

that nothing is due for sepulchral ground;

AND ALSO, that nothing is due for the breaking of the ground for the burial of the inhabitants, either in the church or churchyard.

And THE COURT also established and confirmed the several *modus*es of one penny halfpenny for a colt, and a penny for an ancient garden belonging to an ancient messuage.

a *modus* of 1½d. for a colt, and 1d. for an ancient garden.

And as to the tithes of hops, THE COURT directed, that a case be made and agreed to by counsel on both sides.

A case made as to hops.

AND IT IS ORDERED BY THE COURT, that the bill, as to the tithe wood, should be dismissed without costs.

That tithes are due for wood,

But as to the tithes of milk, calves, wool, eggs, fowls, *Easter* offerings, and bread and wine, that it should be absolutely dismissed with costs, to be taxed by the deputy remembrancer of this court.

and for milk, calves, wool, eggs, poultry, and *Easter* offerings.

BURY, Chief Baron.

PRICE, Baron.

PAGE, Baron.

GODDARD against KEBLE.

EASTER TERM,
8. GEO. 1.

Wiltshire, 19th April 1722.

THE bill stated, that for seven years past, the plaintiff had been rector of *Castle Eaton*, in the county of *Wilts*, and as the great and small tithes of the parish in kind.

The rector of *Castle Eaton*, in *Wiltshire*, claims S.C. Bunb. 105.

such

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and states, that the rectory paying for ten yard lands to the land tax, and being a full tenth part of the parish, is evidence that tithes are due in kind.

The defendant insists on an agreement for the year 1717;

and pleads a tender of the remainder to the time of filing the bill,

insisting on several *modus*es in lieu of the tithes of milk, colts, and sheep not shorn.

But no time being mentioned when the said *modus*es were

such was entitled to all tithes, both great and small, arising therein, and in the titheable places thereof; that the defendant, for three years past, was and still is owner and occupier of divers lands and tenements in the said parish of great value, and had, during that time, fed thereon several oxen, and many other dry, barren, unprofitable, and other cattle, and other matters, for which tithes were due; but that the defendant, pretending that certain tithes are covered with several *modus*es, had refused to pay the same. The bill further charged, that the rectory had always been esteemed equal to ten yard lands within the said parish, and had been, according to that estimate, assessed to the land tax, which is one full part in ten of all the said parish, and is far beyond the value of such rectory, if such *modus*es are binding and even to the full value, if all tithes were paid in kind; by which it appears, that the landholders of the said parish did always consider the plaintiff and his predecessors entitled to all tithes in kind.

The defendant admitted the plaintiff was rector of and entitled to all the great and small tithes within the parish, or to some *modus* or prescriptive payment in lieu thereof; and that he, the defendant, during the said years, was and still is occupier of a messuage, &c. in the said parish; and he said that for the year 1717, he had agreed with the plaintiff for his privy tithes, for five guineas, and insisted on the said agreement and monies paid under it, in bar of the plaintiff's demand of tithes for the said year. He also said, that on the twenty-eighth of September 1719, he tendered to the plaintiff nine pounds, seventeen shillings, and sevenpence, for the remainder of his privy tithes (including the *modus*es, &c. following) due to him from Michaelmas 1717, over and above what were taken in kind, but that the plaintiff had refused the same; and he averred, that he was ready and willing to pay the same: he set forth his titheable matters from Michaelmas 1719, to the time of filing the bill, and, tendering the same, insisted on the following *modus*es in bar of the plaintiff's demand of tithes in kind for milk, lambs, herbage of dry cows, oxen, and dry sheep, depastured in the said parish, but not shorn there, viz. threepence for every milch cow in lieu of tithe milk; threepence for every lamb yeaned (a); one shilling for each dry cow; one penny for each dry sheep, not shorn in the said parish; every colt threepence.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and on reading the answer, and on full debate of the matter;

THE COURT declared, that the said several and respective *modus*es insisted on by the defendant in his answer, should stand over, payable they are over-ruled.

(a) This *modus* was given up as being too rank; for that ten threepences amounted to the value of the lamb. S. C. Bumb. 105.—But see Reddington v.

Nice, ante, 63. where a custom to pay sixpence a lamb, in lieu of the tithe thereof, was held good.

ruled, in regard that no time for payment thereof was ascertained by the defendant (a).

GODDARD
against
KEBLE.

IT IS THEREUPON ORDERED BY THE COURT, that the defendant shall come to an account with and pay the plaintiff for all the titheable matters and things which he had arising and growing upon the said lands, within the parish of *Castle Eaton*, during the time in the bill charged, together with his costs of suit, and that the deputy remembrancer do take the said account, and tax the plaintiff his costs.

And the defendant ordered to account for his tithes in kind, during the whole time demanded.

RO. PRICE.
JA. MONTAGUE.
F. PAGE.

(a) It is said by Mr. Bunbury, that this is the first instance of a court of equity disallowing a *modus* because no time was mentioned when it was payable; but in a note it is said, that the

same point was resolved in *Pemberton v. Sparrow*, 7th June 1722, and in *St. Eloy v. Prior*, 3d February 1723, post, and had been so in several cases since that time. Bunb. 105.

PENRICE against DUGARD.

Worcestershire, 20th June 1722.

TRIN. TERM,
3. GEO. 1.

THE bill stated, that in the year 1717, the plaintiff was instituted and inducted to the vicarage of *Dodderhill*, in the county of *Worcester*, and was thereby entitled to all small tithes and duties whatsoever arising therein; that the defendant rented a farm called *Impney*, the greater part whereof lies in the said parish, and also a farm called *Helbridge*, otherwise *Hellbridge*, containing fourteen acres, at twenty pounds a-year, and other farms, and so enumerates the other lands; some of which he could not set forth, but for which he insisted tithe herbage is due at *Lammas Day* last, and sets out the sums.

The vicar of *Dodderhill*, in *Worcestershire*, is entitled to the tithes of *Impney's Farm*; *Hellbridge Farm*; *Rye Meadows*; and *Ridgeway Farm*, in kind.

The defendant admitted, that since *March 1717*, he had occupied several lands, viz. *Impney Farm*; and that the greater part thereof lies in *Dodderhill*, and the residue thereof in *Saint Peter's*. He also admitted, that he had held a messuage and farm called *Ridgeway*, in the parish of *Dodderhill*, three pieces of land called *Rye Meadows*, and certain other closes of arable land, and two pieces of land called *Hellbridge*, all in the said parish; and he set forth the titheable matters which he had in the said years, but insisted, that for the year 1719, he had paid all tithes for *Ridgeway Farm*; and that for the part of *Impney Estate* which lies in *Dodderhill*, no tithes, in the memory of man, had ever been paid in kind, but a *modus* of four pounds, ten shillings, yearly to the vicar in lieu of all small tithes (except

PENRICE
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DUGARD.

as after mentioned). He also admitted, that the plaintiff, in the year 1718, demanded tithes in kind of that part of *Impney Estate*, which lies in *Dodderhill*, and which he had paid without acquainting his landlord therewith, and hoped it would not turn to the prejudice of his landlord. He said, that on *Saint Thomas's Day*, in the years 1719 and 1720, he had tendered to the plaintiff the said four pounds, ten shillings, which is the usual time of paying the said *modus*; and that he is still willing to pay the same. He also said, that, time out of mind, the occupiers of all lands in *Dodderhill* had yearly paid to the vicar the following customary payments or *modus*, in lieu of tithes in kind, *viz.* for a milch cow, one penny; for a calf, fourpence; for every sheep sheared, one penny; for every lamb, threepence; for every hoghead of cyder and perry, eightpence; and insisted on the said customary payments, and hoped he should not be decreed to account, for that he is and was always willing to pay the same. He said, that as part of the cattle depastured were young cattle reared for the plow or pail, the plaintiff is not entitled to any tithes for the same; and that for the herbage of the other dry, barren, and unprofitable cattle depastured, the tithes thereof did amount to fifty shillings, which he had offered to pay; and as to all his titheable matters, including customary payments, herbage, offerings, and other dues, he insisted that they amounted in the year 1719, to four pounds, one shilling, and tenpence, and no more, and in 1720 to four pounds, three shillings, and twopence, in the whole to eight pounds, five shillings, which, by his answer, he offered to pay to the plaintiff with his costs. He admitted, that in 1718 he had paid the plaintiff the several payments as stated in the bill.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

IT IS ORDERED BY THE COURT, that the defendant shall account with and satisfy the plaintiff for all and singular the titheable matters and things demanded by bill, which have arisen on the said several farms and lands held and occupied by the said defendant, in the parish of *Dodderhill*, and the titheable places thereof; and it is referred to the deputy remembrancer to take the said account.

RO. PRICE.
F. PAGE.
JEF. GILBERT.

THE BISHOP OF LINCOLN *against* ELLIS Bart. and Others.TRIN. TERM,
8. GEO. 1*Lincolnshire, 26th May 1722.*

THE bill stated, that the *Bishop of Lincoln*, by virtue of his consecration to the see of *Lincoln*, on the twelfth of *February* 1715, became seised, in right of his church, of the rectory impropriate of *Bardney*, in the county of *Lincoln*; that by virtue thereof he ought to receive the rents and profits of the glebe lands of the said rectory, and all the tithes, except the tithes of the *demesne* lands of the manor of *Bardney*; that the defendants *R. Sutton* and *Elizabeth Sutton*, as heirs or devisees to *Peter Hancock*, deceased, and the defendant *Ellis*, as guardian to the said *R.* and *Elizabeth Sutton*, and the defendants *Dean* and *Viner*, being occupiers of several lands in *Bardney*, and in the titheable places thereof, and their tenants, had refused to pay their tithes for two years past, on a pretence, that their lands were tithe free; that is to say, that the defendant *R. Ellerby*, from the time of the plaintiff's consecration, had held a farm called *Lowfield*, as tenant to the defendant *Viner*; and that the several others held several farms and lands in the said parish, the particulars whereof the plaintiff cannot set forth, but for which they ought to pay tithes; that the defendant *J. Woodthorp*, for the time aforesaid, as tenant to one *J. Hall*, held a messuage called *Snakeholm Farm*, consisting of arable, meadow, and pasture ground; that the defendant *B. Thompson* had also held of the defendant *Deane* several pieces of ground called the *High Sheep Lease*, and the *Low Sheep Lease*, and several other lands and farms; that, during the time they had held the said premises, the lands had been ploughed and sowed with wheat, rye, barley, oats, pease, beans, and other grain, and the produce thereof reaped every year, the tithes whereof ought to have been paid to the plaintiff; that the said defendants had depastured other parts of the premises with cows, beasts, sheep, ewes, wethers, horses, mares, barren cattle, young beasts, and swine, from which they had great profit by calves, wool, lambs, foals, and other increase of titheable cattle; that they had also employed other parts of their farms and grounds for meadow, from which they had made great quantities of hay, the tithes of all which matters ought to have been paid to the plaintiff, but which the said defendants had refused to do, on a pretence, that the said lands were formerly belonging to the abbot and convent of *Bardney*, at the dissolution of the monastery; that on such dissolution all lands in the proper culture of the said abbot were let by *King Henry the Eighth* to *Robert Thyravit* and of the abbot; and that they were granted to *Thyravit* by *Henry the Eighth* for forty-one years tithe free; and avers that the rectory, with an exception of the *demesne* lands of the abbey, was afterwards granted to the *Bishop of Lincoln*, by *Edward the Sixth*.

The *Bishop of Lincoln*, as impropriator of *Bardney*, in *Lincolnshire*, claims the profits of the glebe lands, and the tithes of the parish, excepting only the *demesne* lands of the manor of *Bardney*; S.C. Buhb. 110.

particularly of the farms called *Lowfield*, *Snakeholm*, *High Sheep Lease*, and *Low Sheep Lease*;

and states, that the defendants pretended, that the said farms were, on the dissolution of monasteries, parcel of the possessions of the abbey of *Bardney*, and in the manurance

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That the abbot
had other lands ;

that *Henry the
Eighth* demised
the rectory to
Willoughby for
twenty-one
years ;

that *Edward the
Sixth* granted the
manor and re-
version of *Thyr-
wit's* interest to
Hennage ;

that the bishop
demised the rec-
tory to *Skipwith* ;

that *Skipwith* de-
mised to *Hancock* ;

John Hennage, for forty-one years, tithe free ; that when the rectory was granted by *King Edward the Sixth*, in the first year of his reign, to *Henry*, then *Bishop of Lincoln*, and his successors, the tithes of the said *demefne lands* were excepted by the said letters patent. The bill then states, that the plaintiff does not demand tithes of the *demefne lands*, which were held by the abbot and convent in their own proper culture at such dissolution ; that the number of acres so granted by *King Henry the Eighth*, to *Thyrwit* and *Hennage*, appear upon record to contain about one thousand three hundred acres ; and that all the lands, lying in *Bardney*, contain above three thousand acres ; that besides the *demefne lands*, the abbot and convent had other lands and tenements, whereon a rent of twenty-eight pounds a-year was reserved to the abbot ; and that the owners of those lands have no pretence to hold them tithe free. It also states, that, after the dissolution, *Henry the Eighth*, about the thirtieth year of his reign, demised the said rectory (except the tithes of the *demefne lands*) to *Sir William Willoughby*, for twenty-one years, at thirteen pounds, six shillings, and eightpence a-year ; that *Edward the Sixth*, by letters patent, dated the seventeenth of *August*, in the second year of his reign, granted to the said *Lord Willoughby* and *Sir T. Hennage*, and the heirs of the body of the said *Lord Willoughby*, by the name of the manor of *Bardney*, as well the reversion of all the said abbots *demefne lands*, so demised to *Thyrwit* and *Hennage*, as all other lands belonging to the abbey of *Bardney*, in the occupation of the several tenants of the said abbot, as is more fully expressed in the said letters patents. The bill then set forth several other conveyances of the said manor or rectory, to *Edward Maddison* and his heirs, for the remainder of twenty-one years then to come ; and further stated, that by reason of such unity of possession of the said lands and the rectory, the several farms and lands in *Bardney*, were demised by *Lord Willoughby* and *Maddison* successively, with the tithes thereof, whereby they increased the rents of the farms ; and that although by means thereof the actual payment of tithes belonging to the said rectory has been suspended, yet the rent of twenty pounds a-year reserved to his majesty, and the further rents reserved to the *Bishops of Lincoln*, had been paid until *Lady Day* 1683, when the lease, which had been last granted by the then *Bishop of Lincoln* of the said rectory, expired ; that about the twenty-sixth of *May* 1684, the then *Bishop of Lincoln* by indenture demised the said rectory to *Sir Thomas Skipwith*, for three lives, at thirteen pounds, six shillings, and eightpence, and ten quarters of barley, and ten lambs a-year ; that the said *Sir Thomas Skipwith* became seised thereof, and did receive the rents of the parsonage-house, glebe lands, and all the tithes thereof, except the tithes of the *demefne lands* ; that *Peter Hancock*, on the twenty-second of *June* 1688, being the proprietor of the several lands and tenements before-mentioned, as belonging to the said defendants *R.* and *Elizabeth Sutton*,

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against
ELLIS, BART.
AND OTHERS.

Sutton, and *Ellis*, did, on the said twenty-second of *June*, pay to the said *Skipwith* fifty pounds, as a composition in lieu of the tithes, from 1682 to 1688, of all the lands then in his or his tenant's possession, which are the same lands as are before-mentioned; that the said *Hancock* did agree to pay to the said *Skipwith*, during the three lives, one moiety of the rents reserved, as a further satisfaction, and in lieu of tithes of the said lands, and paid the same accordingly, and during all such time as the said *Skipwith* paid to the plaintiff and his predecessors the said rents; that all the said three lives being dead before the plaintiff's consecration, he became seised thereof in right of his church, and ought to receive all rents and profits of the parsonage house, the glebe lands, and all tithes, oblations, obventions, and profits of the said rectory, except the *demesne lands*, from the time of his consecration; that he disclaims all tithes arising out of the said abbots *ancient demesne lands*, and only claims tithes of the other lands, which are now held promiscuously with the said *demesne lands*; that by such unity of possession and by inclosures, the *glebe lands*, which were eighty acres, were let as *manor lands*, and became disannexed from the rectory and are lost. The bill therefore prayed, that the said defendants might set forth what messuages, closes, lands, and tenements they had held since the plaintiff's consecration, and the yearly rents thereof, and what profits they had made thereof by hay, corn, grain, and by depasturing of cattle, and all other the titheable matters which they had had since the said consecration, and pay to the plaintiff a satisfaction for the same.

that all the said leasehad expired at the time of his consecration, and that thereby he is entitled to the tithes.

The defendant *Dean* said, that he knew nothing of the plaintiff's title to the said rectory, nor whether there is any such grants thereof as in the bill are set forth; that he is owner of several farms and lands in *Bardney*, which he particularly set forth, and the yearly values thereof; that he had never known that any tithes in kind, or any rate, payment, or composition in lieu of tithes, were ever paid for any of his lands, or any titheable matters arising thereon; and that his lands were parcel of the possessions of the abbey of *Bardney*, which was one of the greater monasteries, in the thirty-first year of the reign of *Henry the Eighth*; that either as parcel of the *demesne lands* of the said abbey, or by prescription, unity of possession, bull, or other discharge, his said lands are, and ought to be free from the payment of tithes; and he insisted on all legal discharges that can be made. He also said, that he knew not of any *glebe lands* belonging to the rectory; and that he was a stranger to the other matters in the bill charged.

The defendant *Dean* says, his lands were parcel of the possessions of the abbey and discharged by unity of possession.

The defendant *Ellis* said, that he knew nothing of the plaintiff's title, nor of the grants; that by the devise of *Peter Hancock*, he is seised as trustee to the defendants *Robert Sutton* and *Elizabeth* his sister, of several messuages, farms, and lands of considerable

The defendant *Ellis* also says, that his lands were parcel of the *demesne land* of the abbey, and are tithes free.

THE BISHOP OF
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against
ELLIS BART.
AND OTHERS.

considerable value, and refers to the defendants, the tenant's answers, for the quantity and value of their lands and the titheable matters thereof. He further said, that he believed that *Thomas late Bishop of Lincoln* made such lease (except the advowson of the the vicarage) to *Sir J. Skipwith*; and that in *Easter Term*, in the first year of *James the Second*, the said *Skipwith* filed his bill in this court, against several tenants of lands in *Bardney*, for tithes; that an issue was directed, on the hearing, to try, whether the lands in the defendant's answer mentioned, were titheable or not; in which issue *Skipwith* was nonsuited, and his bill afterwards dismissed; that pending the said suit, the said *P. Hancock* came to an agreement with the said *Skipwith*, relating to a lease of the said rectory; and that *Hancock* was to have a moiety of the profits of the said rectory during *Skipwith's* lease, and pay him fifty pounds; and that he should pay the then *Bishop of Lincoln*, one moiety of the rents reserved in the lease to be paid by *Skipwith*; that since *Hancock's* death and till the said lease expired, he continued to pay him yearly half the value of the rents; and that since the expiration of the said lease, he had paid the like yearly sum to *Burnet*, the agent of the late *Bishop of Lincoln*; that he knew not whether the same was really due, or could be lawfully demanded, nor that any tithes in kind, or any composition in lieu of tithes, had ever been paid for any of his lands, save what he had paid to the said *Burnet*, and what was paid on the foot of the agreement, which he apprehended was paid in his own wrong. He insisted, that as his lands, either as being part of the possessions of the abbey of *Bardney*, which came to the crown by the dissolution of monasteries in the thirty-first year of *Henry the Eighth*, or as being parcel of the *demefne lands* of the said abbey, or by prescription, *unity of possession*, bull, or other discharge or exemption, were freed from the payment of tithes, and from every thing in lieu thereof; and, claiming all legal discharges and exemptions from tithes that could be made out, further said, that he knew nothing of any *glebe lands* belonging to the said rectory.

The defendants
Dixon, &c say,
they are tenants
to *Ellis*.

The defendants *Dixon, Camock, and Sutton* said, that they were tenants to the defendant *Ellis*: and they set forth the quantity of lands they held under him, and the qualities and values thereof, and averred, that they never knew any tithes in kind to have been paid for the same.

The other de-
fendants put in
the same answer.

The other defendants said, that they knew nothing of the plaintiff's title, and set up the exemption respecting abbey lands, as aforesaid, and averred that they had never paid tithes in kind, and denied knowing of any *glebe lands* belonging to the rectory: and they set forth the lands they held, and the titheable matters.

The evidence
read.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon hearing what could

could be alledged on either side; and upon reading an order of dismission, made by this court the twenty fifth of *November*, in the first year of *William and Mary*, in the cause of *Sir J. Skipwith v. Pickering*, and others (a), as land-owners and occupiers of lands in *Bardney*, and mentioned in the pleadings of this cause; and upon long and mature debate of the matter, after reading the several proofs in the cause;

THE BISHOP OF
LINCOLN
against
ELLIS, BART.
AND OTHERS.

THE COURT unanimously declared, that all the lands in question, in the respective possession or occupation of the several defendants, are liable to the payment of tithes, and ought to pay the same accordingly.

The court unanimously of opinion, that the lands are not tithe free;

IT IS THEREFORE ORDERED BY THE COURT, that the several defendants do forthwith account with the plaintiff for the several tithes of corn, grain, hay, and all other titheable matters and things whatsoever arising from the several lands in their several tenures or occupations, during such part of the time in the bill mentioned, as they severally occupied the same, and that the deputy remembrancer do take the said account.

and the same is decreed accordingly.

In pursuance of the said order, the deputy made his report, dated the ninth of *June* instant, and upon reading the said decree and report, no exceptions having been taken thereto, THE COURT, on the twenty-third of *June* 1725, ordered that the said report be ratified and confirmed, and that the defendants do respectively pay to the plaintiff the tithes reported due from them, together with the plaintiff's costs of this suit, to be taxed by the deputy remembrancer,

JEFF. GILBERT.
RO. PRICE.
F. PAGE.

(a) See this cause reported vol. 1. page 265; and as to the reading of this decree in evidence, see Bunn. 111.

BENNETT, D. D. against TREPASS.

MICH. TERM,
9. GEO. 1.

London, 26th October 1722.

THE bill stated, that about *April* 1717, the plaintiff was duly presented, &c. to the vicarage and parish church of *Saint Giles* without *Cripplegate*, and was thereby legally entitled to all tithes and dues belonging to the same; that great part of the said vicarage was within the city or liberties of the city of *London*; and that for all houses, shops, warehouses, cellars, and stables, within that part of the said vicarage which lies within the city of *London*, or the liberties or the titheable places thereof, there is, and during the time aforesaid, has been due and payable to the plaintiff, as vicar, by virtue of the statute, 37.

The vicar of *St. Giles* without *Cripplegate*, in *London*, claims tithes of four houses pursuant to the rates established by the stat. 37. Hen. 8. c. 12. S. C. Rep. Eq. 191. S. C. Bunn. 106. 143. S. C. 2. Bro. P. C. 437.

O 3

Hen.

BENNETT
against
TRESPASS.

Hen. 8. c. 12. for every ten shillings yearly rent, sixteenpence; and for every twenty shillings yearly rent, two shillings and ninepence; and so above the rent of twenty shillings *per annum*, ascending from ten shillings to ten shillings, according to the rate aforesaid, or some other rate or composition payable quarterly; that the defendants had jointly and severally during the said time held, occupied, and enjoyed several houses, shops, warehouses, cellars, and stables within the said vicarage or parish, or the titheable places thereof, of very great yearly rent and value, as in the schedule annexed to the said bill is set forth, and ought to have paid after the rate aforesaid; but which they had refused to do on pretence that there were certain *modus*es payable in lieu thereof: but the plaintiff insisted, that there was no ancient *modus*, or other sum of money whatsoever payable for the said premises other than two shillings and ninepence in the pound, and that the said defendants had several books, rolls, &c. which make out the same. The bill therefore prayed a discovery of the premises and to be relieved.

The defendants say, that no such rates had ever been demanded or paid; and that as the houses were inhabited by the respective owners thereof before the passing of the 37. *Hen. 8. c. 12.* they were not subject to the rates thereby imposed, but had always paid certain sums in lieu of tithes.

The defendants admitted, that they had respectively possessed several houses within the said vicarage and parish of *Saint Giles*, &c. and believed, that such their houses were situate within the liberties of the city of *London*; and they set forth their houses and the values thereof; but said that the defendant *Whitball* was not an inhabitant though he possessed houses therein; and they insisted, that as no such rates had ever been paid in the said parish, nor had ever been demanded before, and as their houses had been inhabited by the owners thereof, before the said statute 37. *Hen. 8. c. 12.* was passed, it did not affect them, and that the following yearly payments, and no more, were used and accustomed to be paid to the vicars, *viz.* for the defendant *Trepas's*, ten shillings; the defendant *Bockett's*, six shillings; and the defendant *Whitball's*, eight shillings, in lieu of tithes; and they denied, that they had in their custody or power any books, rolls, memorandums, or other papers, which manifested the rates in the said act to be due and payable to the vicar.

The Court, on the hearing of the cause direct a case to be made;

The plaintiff replied; the defendants rejoined; and the cause being at issue and divers witnesses examined, it came on to be heard on the twenty-seventh of *October* last; when upon reading the proofs in the cause, and the statute 37. *Hen. 8. c. 12.* and three several books of the collectors of the tithes of the said parish, the Court took time to consider of the question; and afterwards, by an order made the nineteenth day of *November* 1720, a case was ordered to be made, and that if the parties differed therein, THE LORD CHIEF BARON was to be attended to settle the same; and the Chief Baron was accordingly attended, and he ordered the Court to be moved to settle the case; and the Court, on the seventh day of *February* 1721, did settle the same as follows:

which case was settled as follows by the Court.

THE

THE CASE. "The plaintiff filed his bill, as before stated, and
 "the defendants put in their answers; but there was no proof
 "in the cause, whether the defendant's houses were, or any
 "of them was in lease at the time of making the statute, or not;
 "nor that the sum of two shillings and ninepence in the pound
 "had, at any time, been paid according to the value of the
 "houses, pursuant to the statute and decree. It was proved by
 "some of the plaintiff's witnesses and in the cross examinations
 "by the plaintiff of the defendant's witnesses, that until the time
 "of this present vicar, they never heard of any such demand
 "as two shillings and ninepence in the pound, for the tithes
 "within the said parish. In two ancient tithe books an entry ap-
 "peared "*charged for tithes*," against the names of the then occu-
 "piers of *Trepas's* house, the several sums of five shillings, and three
 "shillings and fourpence; and in another ancient tithe book the
 "several sums of five shillings, three shillings and fourpence, and
 "two shillings and sixpence, were so charged, which last men-
 "tioned sums of three shillings and fourpence, and two shillings
 "and sixpence, were proved to be the collector's hand writing,
 "but the five shillings is of another hand writing; and in ano-
 "ther book the several sums of three shillings and fourpence,
 "and two shillings and sixpence, were so charged and proved to
 "be the collector's hand-writing, but no customary sum, *modus*,
 "or certain sum annually, was proved to have been ever paid other
 "than as afore said. In a book, commencing in the year 1718,
 "and ending in the year 1713, *Bockett's* house is charged one
 "shilling and sixpence, and *Whithall's* houses one shilling each.
 "It was proved by one *Surties*, that, for nine years, during the
 "time of *Bishop Fowler*, he lived in *Trepas's* house, and that
 "during that time he had never paid more to the vicar than
 "ten shillings, or two shillings and sixpence a quarter. The
 "question is, whether two shillings and ninepence in the
 "pound, of the yearly rents of the said defendant's respective
 "houses, be due for tithes by virtue of the said statute and de-
 "cree of 37. *Hen.* 8. or not?

BENNETT
against
 TREPAS.

The question
 being, whether
 2s. 9d. in the
 pound on the
 yearly rents of
 the said houses
 be payable pur-
 suant to the 37.
Hen. 8. c. 12.
 in lieu of tithes.

"CON. PHIPPS.

"THO. BROWNE."

The cause came on to be heard on the said case the twen-
 ty-eighth of *February* 1721, when the same was adjourned to
Easter Term following; and on the eighteenth of *April* 1722,
 it was further heard, when upon reading the case and the proofs
 in the cause, and what was insisted on by counsel on both sides,
 the Court declared they would give their opinion on a future
 day.

The case is ar-
 gued and ad-
 journed.

It came on to be heard again on the thirteenth of *June* following,
 and it was further adjourned to the twenty-fifth of *October* in-

Is argued a se-
 cond time, and
 an issue directed

to try whether, and what sum less than 2s. 9d. in the pound had been usually paid.

BENNETT
against
TRESPASS.

stant, when it accordingly came on; and upon reading the said case, and a decree of the fifteenth year of *James the First*, in the cause of *Ivat v. Warren*; another decree of *Michaelmas Term* 1654, in the cause of *Sheffield v. Warren*; another decree *Trinity Term*, the twenty-seventh year of *Charles the Second*, in the cause of *Umfreville v. Plumstead*; another decree of *Easter Term*, in the fifth year of *William and Mary*, in the cause of *Ward v. Hilder (a)*; another decree of *Michaelmas Term*, the fifth year of *William and Mary*, in the cause of *Grant v. Cannon (b)*; another decree of *Michaelmas Term*, in the sixth year of *William and Mary*, in the cause of *Sayer v. Mumford (c)*; and another on the seventh of *July* 1705, in the cause of *Townley v. Wilson (d)*; the Court adjourned the further hearing to this day, the twenty-sixth of *October* 1722, when it came on to be, and was finally heard, when the Court ordered the following issue to be tried by a special jury, before a baron of this Court, *viz.* “Whether any, and what sum or sums less than “two shillings and ninepence in the pound had been accustomedly paid for any, and which of the houses in the possession of any of the defendants, or any, and which of them.”

A verdict found that 10s. a-year had been paid for *Trepas's* house; 8s. a-year for *Brocker's*; and 4s. a-year for *Whitball's* two houses.

A trial was accordingly had on the twenty-third of *May* 1728, before THE CHIEF BARON, and, on the twenty-sixth of *November* 1724, the cause coming on upon the equity reserved, it appeared on reading *the postea*, “that a certain less sum than two “shillings and ninepence in the pound, for every twenty shillings of the yearly rent of the four messuages in question respectively, was accustomedly paid for the tithes of each of “the said houses, in the form and manner following, *viz.* ten “shillings yearly for one messuage, in the tenure or occupation of *M. Trepas's*, being parcel of the said four messuages “in question; and six shillings yearly for one other messuage,

(a) Vol. 1. page 305.

(b) Vol. 1. page 313.

(c) Vol. 1. page 324.

(d) This was a bill filed by the lessee of the dean and chapter of *W. Minster*, to enforce, from the inhabitants of the parish of *St. Bride's*, in *London*, payment of tithes, according to the rates decreed by the statute 37. Hen. 8. c. 12. The defendants pleaded, that an ancient rate had been uninterruptedly paid in the said parish, until in the year 1666, when the said parish, excepting a few houses, was burnt down by the fire of *London*; that afterwards the statute 22. & 23. Car. 2. c. 15. directed, that the impropiators of the destroyed parishes should pay to the respective incumbents the same monies as had been usually paid to them before the said fire; that sixty pounds a-year had been usually paid to the vicar of *St. Bride's*; that in the year 1675, there

was a general assessment made on the said parish, both for tithes to the impropiators, and the augmented tithes to the vicar, by which the vicar's maintenance was increased to one hundred and twenty pounds a-year; and that the said assessment had been constantly adhered to and observed; and the defendants, after setting forth the said rates made in 1675, and the annual rents of their respective houses, insisted, that they were only liable to pay the said rates in lieu of tithes. The several ancient books or rentals of the tithes of the said parish, from 1639 to 1676, were read in evidence. But THE COURT decreed, that the defendants should pay after the rate of 2s. 9d. in the pound, on the yearly rents of the houses, shops, warehouses, and cellars pursuant to the statute, 37. Hen. 8. c. 12.

“ in

" in the tenure or occupation of *Richard Beckett*, other parcel
 " of the said four messuages; and eight shillings yearly for two
 " other messuages, in the tenure or occupation of *Whitball*,
 " viz. four shillings yearly for each of the said two messuages,
 " being the residue of the said four messuages;" and upon
 hearing counsel on both sides, and upon full debate;

BENNETT
 against
 TRESPASS.

IT IS ORDERED BY THE COURT, that the defendants shall
 account for and pay their tithes for the premises in question
 respectively, according to the said verdict, during the years by
 the bill demanded, and that the deputy remembrancer do take
 the said account.

The defendants
 decreed to ac-
 count according
 to the verdict.

AND IT IS FURTHER ORDERED, that the defendants shall
 pay the plaintiff his costs of this suit as far as the bill and an-
 swer only, but that the plaintiff shall pay to the defendants
 all their costs, at law and in this court, from the time of the
 defendants answer; and that the tithes and costs which, on
 taking the said account, shall appear to be due and payable to
 the plaintiffs, by virtue of this decree, shall be deducted out of
 the costs which the plaintiff is hereby decreed to pay to the said
 defendants as aforesaid; all which costs are to be taxed, adjusted,
 and settled by the deputy remembrancer of this court.

That the plain-
 tiff shall have
 costs of the bill
 and answer, and
 the defendants
 the subsequent
 costs.

On the seventh of *March 1723*, the vicar, *Thomas Bennet*,
 appealed from this decree to the house of lords, where after
 hearing counsel on this appeal, IT WAS ORDERED AND ADJUDGED,
 that the same should be dismissed, and the decretal order therein
 complained of (a) was (*disfentiente clero*) affirmed.

The vicar ap-
 peals and the
 decree is affirm-
 ed.

(a) The order appealed against was, issue to be tried. See S. C. Brown, P.
 that by which the Court directed the C. 437 to 442.

LORD *against* DUPLECK and TURK.

Suffex, 7th December 1722.

MICH. TERM,
 9. GEO. I.

THE bill stated, that the plaintiff, in the month of *October*
 1718, was instituted and inducted vicar of the vicarage and
 parish church of *Tirehurst*, in the county of *Suffex*, and had ever
 since duly officiated therein, and had thereby, or by some other
 lawful ways and means, become entitled to the tithes of hay,
 meadow, corn, flax, hemp, hops, and all other *small tithes*, *Easter*
 offerings, oblations, and obventions arising therein, and in the
 titheable places thereof; that the defendants, for three years
 past, had severally possessed, occupied, and enjoyed several
 messuages, gardens, and lands lying within the said parish, and
 yearly had hay, flax, hemp, meadow, corn, fruit, and other
 matters and things, which became titheable to him as vicar;
 but that they had refused to satisfy him for the same, on a pre-
 tence,

The vicar of
Tirehurst, in *Suf-
 sex*, claims the
 tithes of a farm
 called *Mapleston*.
 S.C. Bunb. 122.

LORD
against
DUPLECK AND
TURK.

The defendants say, that the farm was parcel of the possessions of the monastery of *Roberbridge*, and in the manurance of the monastery at the time it was dissolved; and that the said monastery being of the *Cistercian order*, the said farm, in the occupation of its owner, is discharged from tithes by 31. *Hen. 3. c. 13.*

tence that their lands were exempted from the payment of tithes. The bill therefore prayed a discovery and an account, and that the defendants might set forth their exemption.

The defendant *Turk* said, that he believed the plaintiff was vicar of the said parish, and entitled to the tithes; and that he had, for three years past, been seised and possessed of an estate therein, called *Maplesden*; and he set forth the quantities and values of his tithes, and admitted that the plaintiff had demanded, and that he had refused to pay vicarial tithes, because his said lands were exempted from the payment thereof; and he averred, that no tithes in kind, or any composition for the same, had ever, to his knowledge, been paid for the said premises, when in the occupation of the owners thereof, save only that when he first held the estate, he had paid thirty-two shillings a-year, as the tenants thereof had before done, but he hoped, that such payment would not prejudice his right, especially as the being exempted was as much his lawful right as the estate itself; and he insisted, that the said lands and premises had always been considered part and parcel of the late dissolved monastery of *Roberbridge*; that the said monastery was of the *Cistercian order*; and that the abbot thereof had been freed by the pope of *Rome*, from the payment of all tithes of the lands which the said abbot held in his own hands, and which were manured at the costs of the said fraternity; that at the time the said monastery was dissolved, the abbot and convent held the premises and lands aforesaid discharged of tithes, whilst in their own hands, and with their own costs manured; that by means of the statute 31. *Hen. 8. c. 13.* the person or persons in whom the estate and inheritance of the said lands and premises afterwards vested, and who so held the same in their own hands, were exempted from the payment of tithes, in the same manner as the abbot and convent were at the time of the dissolution; that since the dissolution the freehold and inheritance of the said estate, by several mesne conveyances, was become vested in him; and that, as he himself occupied and manured the same, he was freed and discharged from the payment of tithes, or any thing in lieu thereof.

The defendant *Dupleck* put in the same answer; the lands that he was seised of being part of the said estate called *Maplesden*.

The evidence
read.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on both sides; and upon reading, on the part of the defendants, an *inspeximus* of a grant in the eleventh year of *King Edward the Third*; a surrender of the said abbey of *Roberbridge* to *King Henry the Eighth*, dated the sixteenth of *April*, in the twenty-ninth year of his reign; the bailiff's accounts of the rents of the monasteries surrendered to *Henry the Eighth*; a decree of this court, made the seventeenth of *April*, in the twenty fifth year of *Charles the*

Second, Lord v. Pooke (a); and several depositions taken on the part of the defendants; and upon reading, upon the part of the plaintiff, several tithe books of the said parish of *Ticeburst*, made in the times of the former vicars; a decree made in this court, dated the twelfth of *February, Hilary Term*, the seventh year of *William the Third, Wilkinson v. Newsome (b)*; another decree the twentieth of *November 1701*, in the cause of *Pollard v. Penn (c)*; and also the depositions of several witnesses on the part of the plaintiff, and on full debate;

LORD
against
DUPLECK AND
TURK.

THE COURT was opinion, that the said farm and lands called *Maplesden*, in the occupation of the defendants, are not exempted from the payment of tithes, but that tithes ought to be paid for the same to the plaintiff, as vicar of the said parish of *Ticeburst*.

The Court of opinion, that it is not exempted from the payment of tithes;

IT IS THEREUPON ORDERED BY THE COURT, that the defendants shall severally account with, satisfy, and pay the plaintiff for the value of the tithes of the several vicarial titheable matters and things demanded by the bill, which the said defendants severally had and enjoyed within the said parish and titheable places thereof, during the time in the bill; and that the said defendants shall account with, satisfy, and pay to the plaintiff, for their *Easter* offerings during the time aforesaid; and that the deputy remembrancer do take the said account. The deputy made his report, dated the eighth of *May* instant, and the same was confirmed (*d*).

and the defendant ordered to account accordingly.

J. MONTAGUE.
RO. PRICE.
F. PAGE.
J. G. GILBERT.

(a) Reported vol. i. page 134.

(b) Vol. i. page 355.

(c) The plaintiff *Pollard*, as rector of *Corfcombe*, in *Dorsetshire*, filed his bill against *Penn*, demanding both great and small tithes of certain lands, called *Totterwubelme Farm* held by the defendant in the said parish. The defendant insisted that the lands were his own; and that so long as he occupied them himself they were tithe free; for that they had been parcel of the possessions of the abbey of *Ford*, in *Dorsetshire*, which was one of the greater abbeys, and of the Cistercian order. On reading the surrender of the said abbey, dated the 8th of *March*, the 30th year of *Henry the Eighth*, it appeared, that the manor of *Totter* and *Cattiscliffe* were part of its possessions; and also on reading a grant of the said manors from *Henry the Eighth* to *Lord Pawlet* and his

heirs, dated in the 36th year of his reign, THE COURT, on the 20th of *November 1701*, Mich. Term, the 13th year of *William the Third*, was of opinion, that the defendant's estate was not exempted from tithes, and he was ordered to account for the tithes of the lands he had in his own possession in the parish of *Corfcombe*.

(d) It is said by Mr. Bunbury, that the defendants were decreed to account because it appeared, that the lands were in tenant's hands at the time of the dissolution of the monastery, but his report was cited in the case of *Benison v. Smith*, the 11th year of *George the Third*, and LORD CHIEF BARON PARKER said, that by a note of Mr. BARON PRICE, which he had seen, it appeared, that Mr. Bunbury had misrepresented it. See the case of *Porter v. Bathurst*, Cro. Jac. 559. notis.

MICH. TERM,
9 GEO. 1.

TYRELL *against* KENNETT.

Essex, 7th December 1722.

The rector of *Shopland*, in *Essex*, with the chapel of *Foulness* annexed, is entitled to the tithes of corn, grain, and hay, of the farm called *Little Borrowwood*, situated in the island of *Foulness*.

THE impropiator of *Shopland* and *Foulness*, in the county of *Essex*, claimed all the glebe lands and all the tithes of corn, grain, and hay yearly arising in several acres of arable, meadow, and pasture ground, called *Little Borrowwood*, in the occupation of the defendant, and within the titheable places of the said rectory.

The defendant admitted, that the plaintiff was seised in fee of the rectory of *Shopland*, but not of the rectory of *Shopland* with *Foulness*; and insisted, that he is not entitled to any sort of tithes arising on the defendant's lands in the bill mentioned, for that his lands lie all within the island and rectory of *Foulness*. He alledged, that the rectory of *Foulness* is a distinct rectory, and not annexed to *Shopland*; that the *Island of Foulness* was heretofore part of THE SEA, and extra-parochial; that it had been by parcels at several times recovered from THE SEA, by inclosing the same with banks of earth; that a considerable quantity of lands, of late years, had been so inclosed, and that a number of acres without the banks are fit to be inclosed; that neither the plaintiff, as rector of *Shopland*, nor the vicar of that parish, nor the rectors or vicars of any other parishes near the island, have, or can lawfully make any claim to tithes of the said lands, they not lying within any of the said parishes; and that the said lands are enjoyed without paying any sort of tithes; that upon the first recovering of the said island, (long before the reformation), the inhabitants of *Rochford Sutton*, *Little Wakering*, *Shopland*, *Eaſtwood*, and *Little Standbridge* became farmers of the said lands so recovered, which they held with their other farms in those parishes; that there being then no church or chapel in the island, they resorted, to hear divine service, to the churches where their upland farms lay; that the priests then desired voluntary presents for the lands in the said island; that such presents, being continued for a length of time, were afterwards claimed as due to the rectors, vicars, or priests of those parishes; but that whatever claims they then had to such presents in lieu of tithes for the said lands in the island, the same are since extinguished; for that in the year 1708, the island and the main land were for some time separated by every tide, whereby the inhabitants were deprived, at the point of death, of the benefit of the sacraments, they having no person constantly there to administer the same; that the lord of the manor of the said island, having obtained licence, with the consent of the bishop, and all persons interested, erected a perpetual chantry, for the chaplain to perform divine service in a chapel built there; and that he and they did grant to the said chaplain, and his successors

fors for their maintenance, the tithes and profits arising within the said island, of the parishioners of *Rochford*, &c. aforesaid inhabiting within the said island; that divers chaplains were instituted in the said chantry, enjoyed the tithes and payments in lieu thereof, in respect of their lands in the said island, until the reformation, when the said chantry was converted into a rectory; that since the same was made a rectory, rectors were instituted thereto when vacant; that the rectors have enjoyed all such tithes, as, at the time of the grant were due or payable from any of the parishioners of the said parishes for their lands in the said island, or something in lieu thereof; that from the said grant to this day, the duties of christenings, &c. of the inhabitants of the said island, and particularly of the occupiers of the defendant's lands, have been performed by the rectors of the said chantry, and not by the rectors or vicars of *Shopland*, or other neighbouring parishes, and that all fees have been paid to the rector of the said chantry; that he hath paid, and is ready to pay to the present rector of *Foulness* for all tithes, great and small, arising on the lands in the bill mentioned, according to such compositions, and in such manner as he formerly paid the said rector; that neither the plaintiff's father, who was rector of the said parish of *Shopland*, nor the plaintiff, since his death, had ever, before this bill, claimed any sort of tithes arising on the said lands, or any composition for the same; that the inhabitants of the said island, and in particular the occupiers of the lands in the bill mentioned, never served any parish offices in *Shopland*, or paid any church or parish rates made for *Shopland*, (except as hereafter); that the parishioners of *Shopland*, in making procession round the said parish, never bounded out the said island, or any part thereof, or in particular the lands in the bill mentioned, as part of the said parish; that no boundary remains whereby it appears, that the said island, or any part thereof, and in particular the said lands, ever belonged to *Shopland*; that the inhabitants of *Foulness* have, time immemorial, annually chosen constables, who have served for the island and parish of *Foulness* alone, and never intermeddled with *Shopland*, and have paid their own constable rates without demanding any thing of *Shopland*; that before and until the statute 43. *Eliz.* for the relief of the poor, some pretensions were kept up; that many years since, the church of *Shopland* being out of repair, the churchwardens did pretend to make separate rates for the island, and to compel some of the inhabitants to pay the same, for the repairs, which they refused, until they were compelled by the spiritual court to pay the same; that about ten years ago, the plaintiff demanded of *W. Newberry*, then occupier of the lands the defendant now holds, great tithes, which he refused, and the plaintiff brought his action against *Newberry*, who, being a timid man, agreed with the plaintiff to pay him ten pounds a-year, which he had paid for some time in his own wrong,

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wrong, as a composition to *Michaelmas 1717*; that the lands from that time had been in the defendant's occupation; and as the plaintiff had no right, he had refused to pay any tithes arising on the said lands: and he set forth what corn and grain he had had for three years past; and admitted, that he had paid several annual sums to the vicar of *Shopland*.

The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and upon opening the said bill, and no counsel attending for the defendant; and reading an affidavit of service of *subpœna* to hear judgment; and also reading the answer of the defendant;

IT IS ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay to the plaintiff, tithes in kind for the lands and premises in question, for the years in the bill set forth, according to the proofs taken in the cause; and it is referred to the deputy remembrancer to take the said account, unless cause shall be shewn to the contrary; the defendant first paying five pounds costs before they be heard.

The cause came on again, on the twenty-third of *February 1722*, when the defendant's counsel objected for want of parties, and the Court ordered, that the bill shall be retained, and the plaintiff be at liberty to amend the same, by adding *B. Collins*, clerk, the pretended rector of *Foulness*, a party defendant thereto; the plaintiff paying to the defendant *Kennett* three pounds costs, for this day's attendance before he be heard.

In pursuance of the above order the said bill was amended, and *B. Collins* made a defendant thereto, who appeared, and said, that about the year 1716, he was presented by the *Earl of Nottingham* to the church of *Foulness*; that the said church had been presented as a rectory for many years past; that from the time he became rector thereof, he had received from the defendant *Kennett*, the annual sum of eight shillings and fourpence, in lieu, or as a composition for the tithes of coleseed and mustard-seed growing on *Little Borrowwood Farm*, in the defendant *Kennett's* possession; that he had also received from him ten pounds a-year, as, or under the name of a *pension*, charged on or payable out of the said farm to the rector of the said church, in right of the said church, and believed, that several of his predecessors had received the like annual sums out of the said farm; that he had not received any great tithes, or any *modus* or composition in lieu thereof, and had not heard that any of his predecessors had ever received any; that he apprehended, that, as rector, he was, or might be entitled to the great and small tithes arising upon the said farm, as lying within the said island and rectory, but cannot make out any right to the great tithes, or any *modus* for the same, and therefore did not insist on the same; that he never saw the endowment of the said church,
which

which the plaintiff suggested was endowed as a chapel, but admitted, that he had seen an old imperfect writing, taken out of the old church book of *Hockley*; and that the same was shewn to him, as an exact copy of such endowment, but as he cannot set forth whether it was so or not, he refers, as to the fees given to the chaplain, and as to the reservation made to any mother churches, to such endowment when produced.

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against
KENNETT.

The cause came on to be further heard the nineteenth of *November* 1724; and on reading the proofs taken in the cause; and also an entry in the *Bishop of London's* register, dated the seventeenth of *May*, in the sixth year of *Elizabeth*, and other entries in the said register; and on mature and deliberate debate of the matter had by the Court;

IT IS ORDERED BY THE COURT, that it shall be referred to a trial at law, upon this issue, "Whether the said farm and lands in the defendant *Kennett's* possession, or any and what part thereof do lie in the said parish of *Shopland*?"

The cause, on the twenty-second of *April* 1725, standing upon the equity reserved, it appeared, upon reading the decree and *possea*, that the farm and lands in the defendant's possession do lie in the parish of *Shopland*: and upon full debate,

IT IS ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay to the plaintiff his tithes in kind, according to the prayer of the bill; the defendant *Collins* to be dismissed with forty shillings costs.

R. EYRE.
RO. PRICE.
F. PAGE.
JEFF. GILBERT.

HUGHES against BILLINGHURST.

Berkshire, 10th December 1722.

MICH. TERM,
9. GEO. I.

THE vicar of *Sunning*, in the county of *Berks*, claimed all small tithes, and particularly the tithes of corn-mills; and stated the decree he had before obtained, in the cause of *Hughes v. Englefield* (a).

The vicar of *Sunning*, in *Berkshire*, claims tithes of water corn-mills, willow whatsoever.

eights, and all other small tithes

The defendant admitted, that the plaintiff was vicar of *Sunning*, and entitled to all small tithes, or to some *modus* in lieu thereof, and stated, that until he became vicar, the occupiers of lands in the said parish had never, in the memory of man, that the mills, being ancient mills and never having paid any tithes,

The defendant says, there is a *modus* of 6s. in lieu of the tithes of willows, and are tithe free.

(a) Ante, page 6.

paid

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MURST.

paid their tithes in kind, but, in lieu thereof, certain sums amounting to one hundred and twenty pounds a-year, which the vicar had endeavoured to augment to four hundred pounds a-year; that he occupied two water corn-mills, and had willow eightes; that the said mills were ancient mills, and, having been erected before the statute 9. *Edw. 2.*, ought not to be charged with the payment of any tithes for grinding corn or grain thereat, or for the toll thereof; that he had yearly paid the lessee of the dean of *Salisbury*, who was impropriator of the great tithes, six shillings, as a *modus* in full for all great tithes arising from the willow eightes and the mills, or rather for the willow eightes only, the mills being tithe free, as having been erected before the said statute; and that if tithes were due for the said mills, the same would belong to the impropriator, who, in such case, should be made a party to the bill.

The evidence
read.

The plaintiff replied; the defendant rejoined; and several witnesses were examined; and upon reading a record of the nineteenth of *May*, the seventh year of *James the First*, and the depositions of divers witnesses taken in the said cause;

The bill dismissed
as to the
mills, no proof
having been given
that they had
ever paid tithes
with costs.

THE COURT declared, that the said bill ought to be dismissed as to the demand of the tithes of the mill in question, no proof having been made of the payment of tithes at any time for the same.

IT IS THEREUPON ORDERED BY THE COURT, that the said bill be dismissed, as to the demand of the tithes for the said mill, with costs, to be taxed by the deputy remembrancer of this court, to whom it is hereby referred to tax the same.

HILARY TERM
9. GEO. 1.

TULLIE against KILNER.

Lancashire, 11th February 1722.

The rector of
Aldingbam, in
Lancashire, claims
the tithes of hay
made on lands in
the townships of
Sunbroke and
Bearcliff.
S.C. Bunb. 127.
See another
cause, *Easter*, 18.
Geo. 3.

THE bill stated, that the plaintiff having obtained a presentation from *King William and Queen Mary*, under THE GREAT SEAL, to the rectory and parish church of *Aldingbam*, in the county of *Lancaster*, was, about the twentieth of *May* 1694, lawfully instituted and inducted thereto, and had ever since continued rector of the same, and had thereby become entitled to all tithes, both great and small; that the defendants for nine years past had been, and then were, inhabitants, owners, and occupiers of land which was formerly used as arable, but which of late years, and for all the time aforesaid, had been laid to grass, which they had made into hay, and carried same away, without setting out the tithes thereof, or making any satisfaction for the same.

The

The defendant *Kilner* said, that he had, for the time stated, been occupier of two ancient tenements in *Sunbreake*, in the said parish, part whereof was ancient meadow ground, and had been yearly mown, and made into hay, and the tithes thereof in every year duly paid to the plaintiff; that other parts of the said tenements were arable, and the rest pasture ground; that the arable land was sometimes ploughed and sown with corn, and at other times lay ley; that he and his ancestors, and those whose estate he had in the said tenements and premises, had, beyond all memory, used to mow several parts of the said ley grounds yearly, and had made the grass thereof into hay; but that he could not discover either the quantities or the values of the hay he had thereon in every of the said years.

The defendant *Fell* said, that he occupied an ancient tenement in *Bearcliffe*, in the said parish; and he answered to the same effect as the defendant *Kilner*.

The other defendants admitted, that they held tenements and lands in the said parish; and put in the like answers.

And all the defendants severally admitted, that they had respectively cut and mowed such grass from their said respective ley grounds, and made the same into hay, and carried the same away without setting out the tithes thereof; but they insisted, that they had made the plaintiff satisfaction and recompence for the same, according to the ancient usage and custom prevailing in that behalf in the said parish; that peat and turf then were, and had been, time beyond all memory, generally used for firing in the said parish, and particularly at the parsonage house thereof; that the peat and turf used and spent at the said parsonage house had yearly and usually been carried thither, at great trouble and expence, from *Ulverston Moss* and *Cartmell Moss*, or one of them, the said places lying at a vast distance from the said parsonage house and the houses of the said defendants; that, time out of mind, there had been, and still was, a custom observed, that the possessors and occupiers respectively of any ancient tenement or tenements within *Sunbreake*, *Bearcliffe*, *Seales*, *Aldingham*, *Gleaston*, and *Dendron*, and every or any of them, as for each of the said ancient tenements so by them respectively possessed and occupied, had, with their own horses and carts, respectively led and carried, and ought to lead and carry a cart load of peat and turf from the said messuages, or one of them, to the said parsonage house, for the use of the parson and rector of the said parish, his farmer or deputy, on such day within the space of every two years as the said parson and rector for the time being, or his farmer or deputy, required or should require, in full discharge and satisfaction, and in lieu of all and singular the tithes of hemp and flax grown on the said ancient tenements respectively, and of hay made from grass mowed from

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KILNER.

The defendants say, that the lands consist of ancient meadow and of arable land; that the arable land is sometimes sown with hemp, flax, &c. and at other times converted into a lay ley;

and that there is an immemorial custom in the said parish, that the occupiers of such ancient lands and tenements shall, once in two years, at the request of the parson, draw a load of turf and peat to the parsonage house, in lieu of all tithes of hemp, flax, and hay, grown on the said ley grounds,

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the ley grounds parcel of the said ancient tenements respectively within the same two years; that the said services of leading and carrying peat and turf, all the parsons and rectors of the said parish, their farmers and deputies, had accepted and received, and ought to accept and receive, in full satisfaction and discharge of the said tithes of hemp, flax, and grass cut on the ley grounds belonging to the said ancient tenements and lands: and they set forth the quantities they had cut; and insisted on the said ancient custom, and that the plaintiff had no reason to make any innovation in or breach of the said ancient custom and usage.

The evidence
read.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause, and on full deliberation had thereon;

The *modus* de-
clared to be
void;

THE COURT declared, that the said *modus* or customary payment for the tithe hay, hemp, and flax, in the pleadings mentioned, is not good, and ought not to be established (a).

and the defend-
ants ordered to
account.

AND IT IS THEREUPON ORDERED BY THE COURT, that the defendants shall account with and satisfy the plaintiff for the tithe of all the hay which they have respectively had or made from their said ley grounds within the said parish for the years in the pleadings mentioned: And that the deputy remembrancer do take the said account.

In pursuance of which order, the deputy made his report, dated the twenty-fourth of *January* last; and upon reading the said decree and report, no exceptions having been filed thereto, it is ordered by the Court, on the sixth of *February* 1723, that the same be confirmed, with costs to be taxed by the said deputy remembrancer.

R. EYRE.
RO. PRICE.
F. PAGE.
JEFF. GILBERT.

(a) The reason given by Mr. Bunbury is as follows: "a cart load is too uncertain; it may be drawn by two or six horses; and there is no right of

turbary alledged in the parsonage house, or in the defendant's ancient tenements." S. C. Bunb. 126.

HILARY TERM
9. GEO. 1.

BATE against HODGES.

Kent, 7th February 1722.

The rector of
Wareborne, in
Kent, claims
tithes, both great
and small, except
of corn and hops.
S. C. Bunb. 125.

THE bill stated, that the plaintiff, from *Michaelmas* 1719, had been rector of *Wareborne*, in the county of *Kent*, and entitled to all tithes, both great and small, or to some rate or composition in lieu thereof, save only the tithes of corn and hops.

The

The defendant admitted that the plaintiff was rector of the parish, and entitled to all manner of tithes, or to some *modus* in lieu thereof; and he set forth the quantities and values of his tithes; but he denied that he had cut any wood, save in the hedgerows; and that if he had, it lying in the *Weald of Kent*, no tithe is payable for the same. He also insisted that, time out of mind, there had been due and payable yearly, every *Michaelmas Day*, to the rector of the said rectory for the time being, or his lessee, one shilling an acre, and no more, for every acre of marsh land, meadow or pasture, and for every acre of upland, meadow or pasture, fourpence, within the said rectory, or the titheable places thereof, as *moduses* in lieu of the tithes of hay and all small tithes (except the tithes of hops); that to his knowledge there never had been any variation in the said *moduses*; that no small tithes (except hops) had ever been paid to, or demanded by, any former rector; that there was due from the defendant to the plaintiff twenty pounds, fourteen shillings, and tenpence, which he had, and does now, tender to him for his tithes.

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against
HODGES.

The defendant says, there is a *modus* to pay 1s. an acre for marsh, meadow, and pasture land, and 4d. an acre for upland meadow and pasture, on *Michaelmas Day*, in lieu of the tithes of hay and of all small tithes except hops.

The plaintiff replied, and waived his demand as to the tithe of wood; but as to all the other demands of his bill, he maintained them to be true.

The demand of tithe wood waived.

The defendant rejoined, and witnesses were examined on both sides; and on reading a survey of ecclesiastical benefices taken in the time of *Henry the Eighth*, and remaining in the first fruits office; a decree, dated the thirteenth of *July 1704*, *Gardner v. Wigfall*; and the proofs taken in the cause; and on full debate;

The evidence read.

THE COURT declared, that the *moduses* insisted on by the defendant were good and valid; and ordered the defendant to account with the plaintiff for every acre of marsh land and upland, garden, orchard, nursery, meadow, and pasture, in his occupation during the time demanded in the bill, according to the said *moduses* insisted on in the said answer; and also for his *Easter* offerings for himself and family; and that the deputy remembrancer do take the account; and compute, whether the tender in the defendant's answer was according to the number of acres in the defendant's occupation, both marsh land and upland, meadow and pasture, and also orchard, garden ground, and nurseries, or not. The costs to be reserved.

PRICE, PAGE, and GILBERT, of opinion, that the *moduses* were good;

The plaintiff, in *Easter Term 1724*, petitioned the Court for a re-hearing; and it was ordered accordingly on the fifth day of *May* following.

but a re-hearing is granted;

And the cause came on to be re-heard on the sixth day of *July*; but it was ordered to be adjourned over, and a case to be made by the parties; but, on the eleventh of *November*, the cause was ordered to be re-heard, without making a case.

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against
HODGES.

The cause accordingly came on to be heard on the sixteenth of *November*; and it was then ordered to stand over to the twenty-third of *November* 1724, when it came on to be re-heard; and on reading a survey of the ecclesiastical benefices, taken in the time of *Henry the Eighth*; and also the proofs in the cause; and on full debate;

and the *modus*
adjudged to be
bad.

IT IS THIS DAY ADJUDGED, that the *modus* insisted on by the said defendant in his answer are not good nor valid in law to debar the plaintiff of his right to tithes in kind (a); and thereupon the Court ordered and decreed, that the defendant do forthwith come to an account with the plaintiff for the value of the tithes of all the titheable matters and offerings for himself and family for the time demanded; and that the deputy do take the said account.

In obedience to the said order, the deputy made his report on the eighth of *June* instant; and upon reading the same without exceptions;

IT IS ORDERED BY THE COURT, on the fourteenth of *June* 1725, that the report be confirmed, with costs to be taxed; and that the defendant do pay to the plaintiff fifty-five pounds, four shillings, and twopence, so reported due for his tithes.

JEFF. GILBERT.
RO. PRICE.
F. PAGE.

(a) But see the point brought again before the Court in the case of *Bate v. Howland*, 6th July 1726, Trin. Term, 12. Geo. 1. and the *modus* finally

determined to be good in the case of *Sidney v. Bate*, 27th January 1731, Hilary Term, 5. Geo. 2.

EASTER TERM,
9. GEO. 1.

EVANS against NEVILL.

Gloucestershire, 26th May 1723.

The vicar of *Newland*, in the *Forest of Dean*, in *Gloucestershire*, claims tithes of certain extraparcennial woodlands, called the *Old Park*, *Bream's Grove*, *Snead's Land*, *Kidwell's*, and *Chalfridge*, as lands that had been assarted or grubbed up.

S. C. Bunb, 128,

THE plaintiff, as vicar of the parish church of *Newland*, in the *Forest of Dean*, in the county of *Gloucester*, stated, by his bill, that in the year 1710 he was by the plaintiff, the *Bishop of Landaff*, duly presented, &c. to the said church, as vicar thereof; and having duly officiated the cure, had become entitled to the tithes of wood, and all other vicarial tithes arising therein; that *Edward the First* being seised of the *Forest of Dean*, by letters patent, dated the twentieth of *March*, in the twenty-third year of his reign, granted to the *Bishop of Landaff*, who then held the said rectory and perpetual advowson of *Newland*, and his successors *Bishops of Landaff*, that he and his successors for ever, for the augmentation of the said bishoprick, and for the better maintenance

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against
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nance of a vicar to officiate in the said parish church, should receive to the use of the said church of *Newland* "the tithes of" all lands *assarted*, or afterwards to be *assarted*, being extraparochial, and lying within the bounds of the said *Forest of Dean*; that the *Bishop of Landaff* did, from time to time, afterwards enjoy the tithes of corn and hay arising from such *assarted* lands; that the plaintiff, the present bishop, now enjoyed the same; and that, soon after the said grant, according to the intent thereof for the maintenance of the vicar of *Newland*, the then *Bishop of Landaff* did, by endowment or otherwise, annex the tithes of wood, and all other small tithes of such extraparochial "lands *assarted* and to be *assarted*" to the said vicarage; that the vicars, for the time being, have, from time to time immemorially, received and enjoyed the said tithes; and that he, the plaintiff *Evans*, was lawfully entitled to them; that the defendants, for ten years past, had been seised and possessed of divers wood lands, and other lands in the said parish, and of divers parcels of coppice woods *assarted* out of the said forest, and not in the limits of any parish, which had been usually cut, and were either in the said parish of *Newland*, or *assarted* out of the said forest, and extraparochial; that they did cut and fall great quantities of wood and underwood from the said lands, the tithes whereof did belong to the plaintiff *Evans*; but which they did carry away and dispose of, without setting out the tithes thereof, or making any satisfaction for the same; and that the defendants had other titheable matters from off the said lands, for which the plaintiff ought to have had his tithes. The bill therefore prayed an account and satisfaction for the said tithes.

The defendant *Neville* admitted, that the plaintiff was vicar of the said parish, and entitled to all vicarial tithes therein, and in the limits thereof; but denied that he knew whether any such grant was made of the tithes of the *assart* lands within the said forest, or that there was any enjoyment thereunder, or that the vicarage was endowed with the small tithes of such *assart* lands, or that the vicars had, time immemorial, taken the same. He said, that he had married the defendant *Lady Wintour* (who is since dead), and had the management of all her estates; that he was seised of the wood lands called *Old Park*, *Bream's Grove*, *Snead*, and *Kidnell*, but that he had no knowledge of any such wood as *Chalfridge* (except a small parcel so called, part of the *Old Park*), or that all the said woods lay in the parish of *Newland*, or were extraparochial; that some part of *Old Park* was in the said parish, and other part in *Lidney* parish; and that the tithes thereof had been paid or compounded for with the respective vicars as often as they had been cut (except that part called *Chalfridge*). He said, that he believed that *Bream's Grove* was all in the parish of *Lidney*, and that the tithes

The defendant says, that *Chalfridge* is part of the *Old Park*, and had been *assarted*; that *Bream's Grove* and the *Old Park* are in the parish of *Lidney*; and that *Snead's* and *Kidnell's* lie in the *Forest of Dean*, but had never been grubbed up.

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against
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thereof had been duly paid to, or compounded for with the vicar thereof as often as the same had been cut ; that the woods called *Snead* and *Kidnell* were extraparochial, and lay within the *Forest of Dean* ; that the *Old Park* had not been cut since the year 1710, except the part called *Chalfridge* ; that about the year 1716 they cut the wood called *Snead* and *Kidnell*, and carried the same to their iron works in *Lidney*, without setting out any tithes thereof ; for that *Sir Charles Wintour* and his ancestors had always enjoyed the said woods tithe free, the same never having been *assarted*, but continuing still carefully preserved in woods as they formerly were ; that he had caused a small parcel of wood land, called *Chalfridge*, to be grubbed up, and had thereout several cords of wood and roots, the tithe whereof was not set out or paid, he not knowing that the same did lie in the parish of *Newland* or *Lidney*, and the vicars never demanding the tithes of the same ; but that he was always willing to pay the same to the proper vicar.

A bill of revivor.

The plaintiff filed his bill of revivor and *supplicavit* against the executors of *Dame Wintour* and her trustees, with the usual charges, and prayed to have the former proceedings revived. To which bill the defendants *Conyers* and his wife put in their answer, and admitted assents ; and insisted, that the said plaintiff was not entitled to the tithes of any of the woods lying extraparochial in the said *Forest of Dean* ; but that the family of *Wintour*, under whom they claimed, were entitled to the said lands and the tithes thereof, under several grants from the crown, as set forth in their answer.

The plaintiff waives his demand of the pension.

The plaintiff replied ; the defendants rejoined ; and divers witnesses were examined ; and upon reading a copy of a grant made in the thirty-first year of *Edward the First* ; another grant made in the second year of *Henry the Second* to the *Bishop of Llandaff* ; and also the proofs taken in the cause ; and on full debate ;

The bill dismissed as to *Snead's* and *Kidnell's*.

THE COURT ordered and decreed, that as to the plaintiff's demands for the tithes of the woods called *Snead* and *Kidnell*, the matter of the plaintiff's bill do stand dismissed out of this court.

The defendant ordered to account for certain tithes.

AND IT IS FURTHER ORDERED AND DECREED, that the defendants do come to an account for the tithes which became due from *Dame Frances Wintour*, and the defendants *Neville*, and *Conyers* and his wife (the executors) respectively, within the said parish of *Newland* during the time in the bill charged.

LAMBERT *against* CUMMIN.Lancashire, 21st November 1723.MICH. TERM,
10. GEO. I.

THE bill stated, that the dean and chapter of *Worcester*, by their lease, dated the twelfth of *September* 1712, demised to the plaintiff, for twenty-one years, all the tithes, great and small, of the rectory and parsonage of *Warton*, in the county of *Lancaster*; that the defendants had, for five years past, divers titheable matters growing on the lands they held in the said parish, to which the plaintiff had a right, but which they had refused to pay, on a pretence that their lands were ancient glebe lands. The bill therefore prayed a full discovery, and an account and satisfaction for the said tithes.

The estate called *Hilderstone*, with a right of common on *Yelland Common* appurtenant thereto, and the lands thereto belonging, in the parish of *Warton*, in *Lancashire*, are tithe free.

S. C. Bunb. 138.

The defendant *Cummin* admitted, that he was owner and occupier of an estate called *Hilderstone*, in the said rectory, together with the several closes in his answer mentioned; and said, that all the said messuages, lands, and premises, with their appurtenances, were, by letters patent, dated the twenty-third of *March*, in the thirty-sixth year of *Henry the Eighth*, granted to *J. Bradyll*, his heirs, and assigns, for ever; and that he enjoyed the same under the said letters patent by mesne conveyance from the said grantees of the crown. He also said, that no impropiator of the said rectory, or lessee thereof, was ever entitled to, or had ever taken or received any tithes in kind, or any thing in lieu thereof, for any thing that did arise upon the said estate; that the same was part of the dissolved abbey of *Cockersand*, which was one of the greater monasteries, and came to the crown by the statute 31. *Hen.* 8. and was always held and enjoyed free and discharged from the payment of any tithes in kind, or of any rate, *modus*, or composition in lieu thereof, and had been so enjoyed ever since the dissolution of the said monastery by the persons claiming under the crown; that, as owner and occupier, he ought to have the advantage of such discharge; and that he and his predecessors had enjoyed the said estate above one hundred years discharged from tithes, or any thing in lieu thereof. He also said, that the abbot and convent did, before the said dissolution, hold and enjoy, by virtue of the said lands, a right of common, on a place called *Yelland Common*, which, ever since the said dissolution, had been enjoyed by the owners of the said abbey lands exempt from the payment of tithes, or any thing in lieu thereof; that he and his ancestors, by virtue of the estate aforesaid, had enjoyed, time out of mind, a right of common on the said *Yelland Common*; that the said right of common was appurtenant to the estate, and so had always been exempted as aforesaid: And he insisted, that the benefit arising by such right of common ought to be likewise exempt from the payment of tithes; and

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CUMMIN.

that no tithes had ever been paid or demanded for the same. He admitted, that he held and occupied a few acres of other lands in the said rectory not included in the said abbey lands, for which he claimed no particular exemption from tithes; and that for two years he had sowed the same with oats and barley, for the tithes whereof the plaintiff, he said, had received satisfaction; and that the rest of the time he had depastured the same with plough oxen and working horses used for the benefit of the said land, for which no tithes are due. He denied, that he pretended his lands were glebe, and therefore exempt; but insisted that, as having been the abbey lands aforesaid, they were totally exempted from the payment of tithes. He also denied, that he had driven his cattle or ewes from the said lands not privileged to those that were, to defraud the plaintiff of his tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading a surrender of the abbot of the abbey of *Cockersand*, in the county of *Lancaster*, to THE CROWN, in the thirteenth year of *Henry the Eighth*, being a record out of the augmentation office; and another record of the rolls of letters patent from the crown to *John Bradyll*, dated the thirtieth of *March*, in the thirty-sixth year of *Henry the Eighth*; and the minister's account of the thirty-fifth year of *Henry the Eighth*, being a record out of the augmentation office, whereby it appeared, that the said abbey of *Cockersand* was one of the greater monasteries; and on reading the proofs in the cause; and on hearing what was insisted upon by counsel on either side;

THE COURT declared that the defendant's estate called *Hilderstone*, and the lands thereunto belonging, insisted on by the defendant in his answer to be discharged from the payment of any manner of tithes, were exempt from the payment of any manner of tithes; and that the right of common upon *Yelland Common* was appurtenant to the said estate called *Hilderstone*, and was therefore likewise exempted from the payment of tithes.

IT IS THEREUPON ORDERED BY THE COURT, that, as to the defendant's said estate called *Hilderstone*, and the land and right of common thereunto belonging, declared by the Court to be exempt from the payment of any manner of tithes as aforesaid, the said bill shall be dismissed, with costs of suit to be taxed by the deputy remembrancer of this court.

AND IT IS FURTHER ORDERED BY THE COURT, that the defendant shall come to an account with the plaintiff for such *Easter* offerings and for such other titheable matters and things which the defendant had arising and growing upon his said lands within the said rectory and parsonage of *Warton*, not exempt from the payment of tithes, during such
part

part of the time by the bill charged and required as the plaintiff had received no satisfaction. And it is referred to the deputy remembrancer to take the said account.

LAMBERT
against
CUMMIN.

RO. PRICE.
F. PAGE.
JEFF. GILBERT.

ST. ELOY *against* PRIOR.

HILARY TERM
10. GEO. I.

Bedfordshire, 3d February 1723.

THE plaintiff, as rector of the parish and parish church of *Marston Mortaine*, in the county of *Bedford*, stated by his bill, that in *January 1711* he was lawfully instituted and inducted into the said rectory and parish church, and had ever since performed the cure there, and was entitled to have and receive all manner of tithes, both great and small, arising therein; that the defendant, for four years past, had held and occupied a certain farm of meadow, pasture, and wood lands, garden grounds and orchards, and had thereon hay and other titheable matters and things, the tithes of all which (corn and grain only excepted) were due and payable to the plaintiff; but that he had converted the same to his use, and pretended that no tithes were due. The bill therefore prayed a discovery of the quantities and values of his tithes, and an account and satisfaction for the same.

The rector of *Marston Mortaine*, in *Bedfordshire*, claims all the tithes, both great and small, except of corn and grain, of two closes of pasture, called *the Horsecroft* and *the Home Close*.

The defendant admitted, that for four years past he had occupied and enjoyed one close of pasture called *the Horsecroft*, and another called *the Home Close*; and set forth the quantities of hay, and the number and kinds of cattle depastured thereon, and all his other titheable matters; and insisted, that a *modus* of ten shillings a-year had been, time out of mind, paid to the rector of *Marston Mortaine* for and in lieu of all manner of tithes from the said close called *the Horsecroft*; that ever since he had occupied the same, he had duly paid the said *modus* of ten shillings a year, not only to the former rectors, but also to the plaintiff who had accepted the same in lieu of the tithes in kind thereof until the year 1718; that in *November 1718*, he had paid to the plaintiff the said *modus*, which was due at *Michaelmas* next preceding, and which he had accepted in full satisfaction of all tithes for the said close to that time. He also insisted, that there was, and had been, time out of mind, a rate or *modus* of one shilling in the pound yearly paid to the rector for all the pasture and tward ground within the said parish, as the said pasture ground had been formerly valued and rated, which includes all tithe hay, calves, milk, pigs, and all small tithes whatsoever, arising upon the said pasture ground, in discharge of all tithes whatsoever arising from or out of the same (except *the Horsecroft* and such other

The defendant says, there is a *modus* of 10s. a-year payable in lieu of tithes of *the Horsecroft*; and that in *November 1718* he had paid the rector the arrears of the said *modus* due at the *Michaelmas* preceding, which he had accepted in full satisfaction of the said tithes; that there is another *modus* of 1s. in the pound paid yearly for all pasture and tward ground; that *the Home Close* was rated at 40l. a year; and that he had

tendered 40s. to the rector, in lieu of the tithes of the same.

ST. ELOY
against
PRIOR.

particular parcels of ground then in the possession of R. Savell in the answer mentioned, for which other *modus* have, time out of mind, been paid). He also said, that he had not any other land in his occupation for the said years, save as aforesaid; and that he had offered to pay the plaintiff the said *modus* of ten shillings a-year due ever since Michaelmas 1713; and also forty shillings a-year for the tithe of the *Home Close*, the same being rated at forty pounds *per annum*, and which had always been paid and accepted; and he now tendered the same by his answer.

The evidence
read.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon opening the pleadings, and hearing the plaintiff's counsel object against the validity of the two several *modus* as laid in the answer, and on hearing the defendant's counsel; and on full debate of the matter;

The *modus* declared to be void, and the defendant decreed to account for his tithes in kind.

THE COURT declared, that the said two several *modus*, as laid in the answer, were not good; and therefore this day ordered, that the defendant shall account with, satisfy, and pay to the plaintiff, for the value of the tithes of the several titheable matters and things which the defendant had upon or from the *Horsecroft Close* and the *Home Close*, within the said parish of *Marston Mortaine*, and the titheable places thereof, for and during the time demanded by the bill (a).

R. EYRE.
RO. PRICE.
F. PAGE.
JEFF. GILBERT.

(a) It is said, in a note to the case of *Goddard v. Keeble* Bunb. 105. that the reason why these *modus* were adjudged void was, because there was no time mentioned when they were payable.

HILARY TERM
10. GEO. I.

GOOLE against JORDAN.

Oxfordshire, 6th February 1723.

The vicar of *Eynsham*, in *Oxfordshire*, says, he is entitled to the tithe of the herbage and furze on *Hanberry Close*.

S.C. Bunb. 144.

THE bill stated, that for six years past the plaintiff had been lawful vicar of *Eynsham*, in the county of *Oxford*, and entitled to all the tithes and profits belonging to the said vicarage, particularly to the tithe of herbage for agisting and feeding all dry, barren, and unprofitable cattle; the tithe of furze when cut; and to a pension of six pounds a-year, payable by the lords of the manor there; that the defendants, for the same time, had jointly held a close, called *Hanberry*, otherwise *Hanberry Close*, lying within the said parish, in which close they had fed, agisted, and depastured, several horses, cows, steers, and other dry, barren, and unprofitable cattle belonging to other persons; and had yearly cut divers quantities of furze, the tithes thereof ought to have been paid to the plaintiff; and also

also that the said defendants were jointly seised of the said manor, and ought to pay the plaintiff the said pension.

GOOLE
against
JOHNSON.

The defendants admitted, that the plaintiff was vicar, and entitled to all the tithes belonging to the vicarage; but denied that, to their knowledge, he was entitled to tithe herbage and furze; and insisted, that the pension of six pounds a-year was payable by the impropiator of the parish, and not by the lords of the manor. They confessed, that they held the close as mentioned in the bill, and that they had taken in by agistment, kept, fed, and depastured thereon, divers horses, geldings, heifers, cows, steers, and other dry, barren, and unprofitable cattle, belonging to other persons, the herbage whereof, one year with another, might come to six pounds a-year. They also confessed, that they had dug or grubbed up furze in the said close worth four pounds a-year; and insisted, that the said close was exempt and discharged from the payment of any tithes for all or any of the titheable matters and things arising or growing therein to the vicars of the said parish; but how they cannot set forth, otherwise than that the said close was parcel of the ancient demesnes of the manor of *Eynsham*, and formerly parcel of the possessions of the abbey of *Eynsham*, and held discharged of tithes at the time of the dissolution thereof, about the thirty-first year of *Henry the Eighth*, and by virtue of an act of parliament passed in the thirty-first year of *Henry the Eighth*; and therefore ought to be held discharged of tithes. They denied, that they are entitled to the manor of *Eynsham*, or that they were obliged to pay the said pension; and admitted, that they had not made the plaintiff any satisfaction for the tithes of the said close.

The defendants say, that they do not know that he is entitled to such tithes; for that the said close was parcel of the demesne lands of the abbey of *Eynsham*, and ought to be held tithe free.

The plaintiff replied specially, and therein waived his demands as to the pension; but insisted on the tithes of the said close; the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause;

The evidence read.

IT IS ORDERED BY THE COURT, that the defendant shall account with, satisfy, and pay the plaintiff the value of the tithes arising upon the said close for the time demanded by the bill for the agistment of dry, barren, and unprofitable cattle fed, and also for the furze cut thereon.

The tithes of herbage and furze decreed.

BIRCH against STONE.

Derbyshire, 19th February 1723.

HILARY TERM
10. GEO. I.

THE rector of *Barton Blount*, in the county of *Derby*, claimed all manner of tithes arising in the said parish.

The rector of *Barton Blount*, in *Derbyshire*, claims tithes in kind.

BIRCH
against
STONE.

The defendants
state a *modus*.

The *modus* de-
clared void for
uncertainty.

The defendants said, that there is a meadow in the said parish, called the *Parson's Meadow*, and that the plaintiff and his predecessors had, time out of mind, enjoyed the said meadow, and also several *beast grasses* in the said parish, in lieu of the tithes within the said parish.

THE COURT, upon mature deliberation had thereon, declared, that the *moduses* laid in the answer, by reason of their uncertainty, are not good; and thereupon ordered the defendants to account for their several titheable matters and things.

F. PAGE.

EASTER TERM
10. GEO. 1.

COCKCROFT against UTLEY.

Yorkshire, 4th May 1724.

The impropria-
tor of Halifax, in
Yorkshire, de-
mands tithes in
kind for the vill
of Heptonstall.

THE bill stated, that the plaintiff had, for thirty years past, been impropriator of all the tithes of corn, grain, hay, and grass yearly renewing within the vills of *Warley*, *Midgeley*, *Wadsworth*, *Heptonstall*, *Erringden*, otherwise *Agenden*, and *Stansfield*, and of all tithes of wool and lambs on the south and north parts of the river *Calder*, within the vicarage of *Halifax*, in the county of *York*, and of all other tithes, oblations, obventions, fruits, profits, rights, jurisdictions, privileges, and hereditaments, thereto belonging; that all owners and occupiers of lands within the said vills ought yearly to pay their tithes, or some *modus* or composition in lieu thereof, to the said plaintiff; that the defendant, for twenty years past, had been proprietor or occupier of lands and tenements in the said vills, and had therein yearly sowed, and reaped, wheat, rye, barley, big, oats, beans, and pease; that he had also cut hay; that he had also depastured sheep and lambs thereon, and had clipped wool; and that he had refused to pay any tithes to the plaintiff for the said matters. The bill therefore prayed a full discovery of his titheable matters and things, and an account and satisfaction for the same.

The defendant
insists on a *mo-
dus* of 1s. 8d a-
year, payable on
the 2d of Febru-
ary, in lieu of
the tithes of hay
and corn of the
farm he held in
Widdop, in the
vill of *Hepton-
stall*.

The defendant said that he had, for ten years last past, farmed a small arable and pasture farm in *Widdop*, in the vill of *Heptonstall*; but that the arable part thereof was so soft and boggy that it could not be ploughed with cattle; that he might have dug and sown, one year with another, about two or three acres with oats, part of which was obliged to be harrowed in by the strength of men, on account of the infirmity of the land; that he had yearly mowed and made into hay about eight acres of land; that he had never held any other lands in any of the said vills or places; that he had yearly kept on the said farm, and on the moors and wastes in *Heptonstall*, where, by virtue of his farm, he had a right of pasturage, several sheep; and that no tithes in

in kind of corn, hay, wool, or lambs, had ever been taken or gathered in kind in any of the said villis or places; but that there had been immemorially a certain *modus* yearly paid by the owners or occupiers of lands there, particularly within the vill of *Heptonstall*, where the defendant's lands lie, and by all those whose estate he had in the said farm, to the owners or farmers of the tithes, of one shilling and eightpence, in lieu of all tithes in kind of hay and corn; that the said *modus* is due and payable on the second of *February* yearly; that he had constantly paid to the plaintiff the said sum, and therefore owed him nothing for the said tithes. He also insisted, that no tithes in kind are due, or had ever been demanded or taken for wool or lambs; but that immemorially a *modus* or composition had been paid for such tithes in the said place, particularly within *Heptonstall*, viz. one penny a fleece for every sheep that had been kept the whole year in that liberty; an halfpenny a fleece for every sheep that had been wintered out of the liberty; and for every lamb fallen there, if but one, an halfpenny; two, one penny; three, three halfpence; four, fourpence; five, one shilling; six, one shilling and tenpence; seven, one shilling and tenpence halfpenny; eight, one shilling and elevenpence; nine, one shilling and elevenpence halfpenny; ten, two shillings; and so in proportion to the number. He also said, that he had never heard that any tithes were paid or had been demanded for any lambs fallen in a foreign parish from sheep which had been wintered there, and out of the several places and liberties aforesaid, until the plaintiff, within three years last past, made such demand; that in such case the parson or impropiator of the parish where the lambs fell demanded and took full tithes for such lambs; and that if any lambs happened to drop where the sheep were summered, the owners of the tithes of that place received the whole tithe of such lambs, though the sheep were wintered in another parish; that the said *modus* for wool and lambs was payable about *Midsummer* yearly; and he averred, that he had paid his tithes for wool and lambs within the said two years. He also said, that, the year before, he had lambs dropped at *Broughton cum Elstock*, for which he had paid the whole tithes to the farmer of the tithes there; that he had had several sheep the whole year at *Heptonstall*, from which he had lambs, and that he had offered to pay the plaintiff for the same according to the said custom; but that he had refused to receive the same, unless he would pay him for the lambs which had been dropped in *Broughton* equally with those which had fallen in *Heptonstall*. He also said, that he had tendered to him the whole tithe of one penny a fleece for the old ones which had been wintered at *Broughton* that year; but that the plaintiff had also refused to accept the same; and he denied that he owed for any of the said tithes, or any *modus* or composition for the same, save for the year 1721, which, he said,

COCKCREST
against
UTLEY.

Another *modus* of 1d. a fleece for every sheep kept in *Heptonstall* the whole year; and a $\frac{1}{2}$ d. a fleece for every sheep wintered elsewhere.

Another *modus* for lambs, according to their numbers;

that no tithes are due to the plaintiff for lambs dropped from sheep wintered out of the liberty;

that the *modus* for wool and lambs is payable at *Midsummer*;

and he states the titheable matters he had had; and avers, that he had offered to pay the tithes thereof.

COCKCROFT
against
UTLEY.

said, he had offered to pay as aforesaid, and which he was still ready and willing to pay; and that, during the time he had held his farm, he had no other tithes than aforesaid: and he set forth the quantities of the hay and oats he had in the said years.

The evidence
read.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading an order dated the ninth of *February* 1722; a grant from the crown of the eighth year of *William the Third*, in 1696; the depositions taken in the cause; and on full debate, and consideration thereon had;

The bill dismissed.

IT IS ORDERED BY THE COURT, that the bill be dismissed, with costs to be taxed for the defendant.

R. EYRE.
RO. PRICE.
F. PAGE.
JEFF. GILBERT.

EASTER TERM
10. GEO. 1.

FINCH against GERRARD.

Lancashire, 27th April 1724.

The rector of *Winwick*, in *Lancashire*, claims tithes of hay in kind, and the agistment of barren and unprofitable cattle.

THE rector of *Winwick*, in the county of *Lancaster*, claimed tithe of hay cut, and of the agistment of all the dry, barren, and unprofitable cattle fed and depastured in the said parish by the defendants since *March* 1722.

The defendant *Masters* says, he is the owner of *Newball*; and that there is a *modus* of 1d a year, payable at *Easter*, in lieu of the tithes of hay of the said farm; and that the rector enjoys *Winwick Hall*, with its manor and demesne lands, in lieu of the tithe for depasturing dry and unprofitable cattle.

The defendant *Masters* said, that he had been several years owner of an ancient messuage called *New Hall*, and some land lying in *Ashton*, in *Mackerfield*, in the said parish; and insisted, that all the owners of the said messuages and lands, their tenants and farmers, had, time immemorial, yearly at *Easter*, or as soon after as the same had been demanded, paid the rector, for the time being, one penny as a *modus* in full satisfaction for the tithe of all hay arising on the said lands; and that the plaintiff had received the same for thirty years past until a year ago, when he refused to accept the same, and insisted on receiving the tithe in kind; and he averred, that he was willing to pay the said annual payment, together with the plaintiff's costs, if he would accept the same. He also said, that the rectors had, time immemorial, been seised of and entitled to, as in right of the said rectory, the capital messuage called *the Hall of Winwick*, and the *Demesne Lands* thereto belonging, and the manor or lordship of *Winwick cum Hulme*, together with the tithes and rectorial dues then and usually paid, which amounted to one thousand pounds *per annum*, and were at least one-eighth part of the parish; and that they had ever since enjoyed the same; but he insisted, that

that the said capital messuage, lands, and lordship were anciently given and allotted to the rectors in satisfaction and as a real composition in lieu of tithes of dry, barren, and unprofitable cattle depastured in the said parish (except for tithe herbage or agistment of unprofitable cattle on the lands of the defendant *Gerrard* at *Gartswood* and *Bryn*, for which, and other tithes and dues, he paid a *modus*) ; and that no tithes for any such agistment, or the profit thereof, or any thing in lieu thereof, had ever been demanded or paid, save as aforesaid : and he set forth the titheable matters he had had on the said land.

FINCH
against
GERRARD.

The defendant *Gerrard* said, that he had, for divers years past, been owner of two ancient messuages, called *Gartswood Hall* and *Byrn Hall*, and several acres of land belonging thereto, lying in *Ashton*, in *Mackerfield*, in the said parish ; and he insisted, that there was a *modus* of one pound, six shillings, and eightpence, in lieu and satisfaction for the tithe of all hay, small tithes, and *Easter* offerings, arising yearly, or payable for the premises ; that the plaintiff had received the same for thirty years past until a year ago, when he insisted on tithes in kind for the same ; and he averred, that he was willing to pay the same, together with the plaintiff's costs. He also said, that for several years past he had been owner of land in *Ashton*, called *Calland's Estate*, for which he paid one penny as a *modus*, for and in lieu of tithe hay ; and that the plaintiff had received the same for thirty years past. He also said, that the rectors of the said parish had enjoyed *Winwick Hall*, as above stated by the defendant *Masters*, in lieu of the said tithes of his lands ; and he set forth the titheable matters and things he had had on the said premises. He further said, that the rest of his *demesne lands* were occupied by tenants.

The defendant *Gerrard* says, that he is owner of *Gartswood Hall* and *Bryn Hall* ; and insists on a *modus* of 1l. 6s. 8d. in lieu of the tithe hay and small tithes.

He also says, that he is owner of *Calland's Estate* ; and sets up a *modus* of 1d. a-year in lieu of tithe hay, and the enjoyment of *Winwick Hall*, in lieu of tithe herbage.

The defendant *Barker* said, that he had, for several years past, been occupier of an ancient messuage and land lying in *Newton*, in the said parish ; and he insisted on the same *modus* of one penny in lieu of tithe as aforesaid ; and after setting forth his titheable matters averred, that he had not depastured any dry cattle thereon.

The defendant *Barker* sets up the same *modus* for the lands in *Newton*.

The defendant *Green* said, that he had been, for several years past, occupier of an ancient messuage and lands in *Richley*, within *Culcbeth*, in the said parish ; and insisted on the same *modus* of one penny ; and set forth his titheable matters.

The defendant *Green* does the like.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon reading the several proofs taken in the cause on the part of the defendants and the answers ; and hearing counsel on both sides ;

The evidence read.

THE COURT declared, that the *modus* of one penny insisted on by the defendants several answers to be payable to the plaintiff by each of the said defendants, in satisfaction for the tithe of all hay

The *modus* of 1d. a-year in lieu of tithe hay declared to be good.

FINCH
against
GERRARD.

hay arising on the said defendant's several lands within the said parish of *Winwick* (excepting the lands belonging to *Garfwood Hall* and *Bryn Hall* aforesaid, in the possession of the defendant *Gerrard*) is a good and a certain *modus*.

The *modus* of
xl. 6s. 8d. a-
year in lieu of
tithe hay de-
clared good.

AND THAT the *modus* of one pound, six shillings, and eightpence, insisted by the answer of the defendant *Gerrard* to be payable by him to the plaintiff in satisfaction for the tithes of all hay, small tithes, and *Easter* offerings, arising yearly on *Garfwood Hall* and *Bryn Hall*, and the lands thereto belonging, is also a good and certain *modus*.

The bill as to
tithe hay dis-
missed.

AND IT IS ORDERED BY THE COURT, that as to the demand of tithe hay, for which the plaintiff seeks relief against the said defendants, the bill shall be dismissed, with costs to be taxed.

The bill as a-
gainst *Barker*
dismissed, he not
having depastured
cattle on his
lands;

And it not appearing to the Court that the defendant *R. Barker* had any agistment cattle within the said parish, or that the defendant *Gerrard* had any agistment cattle on *Calland's Estate* during the time mentioned in the bill,

and also for the
same reason a-
gainst *Gerrard*.

IT IS THEREFORE ORDERED BY THE COURT, that as to the plaintiff's demand on the said *Gerrard* and *Barker* for agistment, the said bill shall likewise be dismissed in that particular with costs.

But *Masters* and
Green ordered to
account for the
tithe of depas-
turing barren
cattle.

AND IT IS FURTHER ORDERED BY THE COURT, that the defendants *Masters* and *Green* shall come to an account with the plaintiff before the deputy remembrancer of this court (a) for the tithe of agistment of all dry, barren, and unprofitable cattle by them fed and depastured within the said parish of *Winwick*, and the titheable places thereof, during the time demanded by the bill; the said deputy to make his report herein.

THE COURT FULL.

(a) JOHN HARDING, Esq. Deputy Remembrancer.

TRIN. TERM,
10. GEO. I.

HARRISON against SHARPE.

Lincolnshire, 18th July 1724.

The vicar of
Grantham, in
Lincolnshire,
claims the tithes
of cows, sheep,
calves, and
lambs fed on the
pastures where
the hamlet of
Harroby for-
merly stood.
S. C. Bunb. 174.

THE plaintiff, as vicar of the parish church and the united vicarages of *South Grantham* and *North Grantham*, in the county of *Lincoln*, stated, that the vicarage of *Grantham* was formerly divided into two mediocities, viz. *South Grantham* and *North Grantham*, but that they are now consolidated; that the plaintiff being legal vicar of both is entitled, by virtue of such union and consolidation, to all the vicarial tithes, duties, and profits whatsoever, belonging thereto; that within the said parish there

there were anciently several villis or hamlets, particularly *Harrowby*; that the said hamlet, which was formerly part of the vicarage of *North Grantham*, is now depopulated, and converted into inclosed pasture grounds; that the defendants, for two years past, had occupied lands therein, and had yearly kept and depastured cows and sheep thereon, which had calves, lambs, and wool, and had several other titheable matters, the tithes whereof ought to have been paid to the plaintiff.

HARRISON
against
SHARPE.

The defendants said, that there might have been such a vill as *Harrowby*, and that the same is now depopulated, and converted into pasture grounds; that in the said years they had held a few closes in the said vill; that it had, time out of mind, been the usage and custom, that when any of the said inclosed pasture grounds in *Harrowby* were ploughed and sown with corn or grain, or laid down for meadow, and the produce made into hay, the tithes thereof in kind were paid and belonged to the impropricator of the rectory, or his tenants; but that when the same were eaten, and depastured with sheep or cattle, the occupiers of such grounds paid to the vicar one shilling in the pound of the yearly rent or value thereof, and no more, upon some day after *Michaelmas* yearly, in lieu of all tithes whatsoever (a): and they set forth their titheable matters and things, and the sums they had paid for the same; and averred, that they had tendered what was due to the plaintiff, which he had refused to accept.

The defendants insist on a custom that when the said lands are ploughed or mowed, the tithes are paid in kind to the impropricator, but that when they are fed, the occupiers pay yearly 1s. in the pound on the rent to the vicar upon some day after *Michaelmas*, in lieu of tithes.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon opening the bill and answer;

The evidence read.

IT IS ORDERED BY THE COURT, that the defendants do forthwith come to an account before the deputy remembrancer for all the titheable matters and things in the bill mentioned (b).

Tithes in kind decreed.

(a) Mr. Punbury, S. C. 174. says, that this *modus* was, by the opinion of the whole Court, adjudged void, upon the authority of the case of *Startupp v. Dodderidge*, 2. Salk. 657. 11. Mod. 60. Lilly's Ent. 19. 2. Ld. Raym. 1158. and ante, vol. 1. page 283.

(b) On the 5th of December 1698, *Michaelmas* Term, 10. Will. 3. *Dodderidge*, the rector of *Wbatlington*, in *Suffex*, filed his bill against *Bridger* and *Gringe*, two inhabitants of the parish, to recover the tithes of corn, grain,

hay, wool, hops, &c. The defendants insisted, that there was a *modus* of two shillings in the pound on the respective rents or yearly values of their farms, payable yearly in lieu of tithes. But the Court was of opinion, that the *modus* was void; and the defendants were decreed to account for their tithes in kind. Book of Decrees and Orders. — See the record of this case, Lilly's Ent. 311. and the report, 1. Ld. Ray. 696.

TRIN. TERM,
10. GEO. I.

WOODNORTH *against* LORD COBHAM.

Buckinghamshire, 22d June 1724.

The lay-impro-
priator of *Thorn-*
borough, in *Buck-*
inghamshire, en-
joys a certain
ground, called
the Parsonage
Meadow, in lieu
of the tithes of
Lot Meadow in
the common
fields of the pa-
rish; and the
lands called *the*
Chauntry Pastures
pay a *modus* of
16s. 4d. a year
to the vicar, in
lieu of all tithes.
S. C. Bunb. 180.

THE bill stated, that the plaintiff, about the sixteenth of July, in the year 1707, by purchase from the *Earl of Suffolk*, became seised in fee of the manor and rectory of *Thornborough*, in the county of *Bucks*, with the appurtenances, formerly part of the priory of *Luffield*, and ought to have the revenues, and particularly the tithes of the parsonage, from that time; that the defendant *Lord Cobham* owned a messuage and lands there, called *Barton's Chauntry*, or *the Chauntry Pastures*, and certain meadows, called *the Lot Meadows*, lying dispersed in the common meadows of the parish, which had been in the tenure of the defendant *Gibbs* from the time that the plaintiff became so seised until the year 1714; that the plaintiff, at his entering upon the premises, understanding that the said *Gibbs* had refused to pay tithes for the same, he, to prevent disputes, applied to *Lord Cobham*, and desired him to settle the same; that *Lord Cobham* inspected the plaintiff's title, and, two years afterwards, ordered *Gibbs* to pay the tithes; that the plaintiff accordingly received the tithe hay, or composition for it, until the year 1714, but that they had never paid him any other tithes, or given him any satisfaction for the same, though they had other titheable matters in the said parish; but that they had offered him eight pounds for his tithes; that in the year 1714 they let sixty acres of the *Chauntry Pastures* to a tenant, who tilled the same and sowed it for three years with woad, and reaped and gathered the produce thereof; that the defendants had severally depastured the waste lands and commonable grounds in the parish, ever since the plaintiff's entry, with beasts and poultry; that they had had great quantities of fruit; that they had also mowed the *Lot Meadows* and other parts of the said lands, and had hay therefrom; the tithes of all which ought to have been paid to the plaintiff, or a satisfaction made to him for the same; but that they had refused so to do, on a pretence that the *Lot Meadows* were tithe free, and that a *modus* was payable for the *Chauntry Pastures*. The bill therefore prayed a full discovery of the said lands, and an account and satisfaction for the tithes thereof.

The defendant *Lord Cobham* admitted, that the plaintiff had made such purchase as in the bill was stated; and said, that he, the defendant, owned a messuage in *Thornborough*, and the lands adjoining, called *the Chauntry Pastures*, and a little *Lot Meadow* in the common fields, as appurtenant to a small quantity of arable land, and one half yard of grazing ground in *Thornborough* common field, all which (among other quantities of lands) were then- tofore called *Barton Chauntry*; that the said *Chauntry Pastures*, and *Meadow Ground*, and *Half Yard Land*, had been demised to the

the defendant *Gibbs*, and that he could not tell what titheable matters had arisen thereon; that no tithes in kind had ever been paid for the same; that the impropiators for the time being had enjoyed a meadow, called *Parsonage Meadows*, in lieu of the tithes for the said *Half Yard Land* and *Lot Meadows*; and that the plaintiff now enjoyed the same; that he demised part of *Chauntry Pastures* from *Lady Day* 1716, to be sowed with woad, tithe free; the said premises being legally exempted from the payment of tithes in kind, they never having paid any tithes in kind to the prior of *Luffield* during the time that the prior was seised of the rectory, nor afterwards to any rector there, before they became vested in his, the defendant's, ancestors; but he could not say whether his ancestors had held the said rectory and chauntry lands at the same time. He also insisted, that no tithes were due to the plaintiff for any of the premises mentioned in the bill, for that the plaintiff enjoyed several meadows of eight or ten acres, in lieu of all tithes of the *Lot Meadows*, of which his small quantity was parcel. He also said, that he and his ancestors, owners of the said *Chauntry Pastures*, had, time out of mind, paid sixteen shillings and fourpence a year to the vicar, in full discharge of tithes of the *Chauntry Pastures*; which *modus* he relied on.

WOODNORTH
against
LORD
COBBHAM.

The defendant *Gibbs* put in the same answer as the other defendant, and said, that he had once paid the plaintiff five shillings for his tithes in his own wrong.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon opening the bill, and reading an affidavit of the service of a letter missive, and a *subpœna* to hear judgment on the said defendants; and no counsel attending for them; and reading their answers;

IT IS ORDERED BY THE COURT, that the defendants do come to an account with the plaintiff before the deputy remembrancer of this court for the several titheable matters and things by the bill demanded to the time of filing the said bill, unless cause be shewn to the contrary; the defendants paying five pounds costs before they be heard.

The defendants paid the costs, and appeared by counsel; and on reading the depositions of many ancient witnesses on both sides in the cause; the entries in very many ancient books of account of the then stewards (a) or agents of the defendant *Lord Cobham* and his ancestors, whereby it appeared, that the *modus* of sixteen shillings and fourpence a-year had been paid to the ministers for the time being, vicars of *Thornborough* for many years, beginning 1673 and ending 1704 successively, in lieu of the tithes for the *Chauntry Pastures* demanded by the bill; several receipts given by the ministers for the time being vicars

(a) See Bunb. 180.

WOODNORTH
against
LORD
CORHAM.

of *Thornborough*, for the *modus* of sixteen shillings and fourpence a-year, which receipts appeared to agree with the entries in the said books for the sums therein mentioned; a deed, dated the twenty-second of *June*, in the twelfth year of *James the First*; and the plaintiff not insisting on his pretended right to the tithes of the *Lot Meadows*, lying in the common fields of *Thornborough*, because it appeared, that he and his predecessors had, time out of mind, occupied and enjoyed a certain meadow in *Thornborough*, called the *Parsonage Meadow*, in lieu of all tithes for the *Lot Meadows*; and on full debate of the matter;

THE COURT, on the twenty-sixth of *October* 1724, declared, that the defendants had fully proved the *modus* of sixteen shillings and fourpence a-year payable to the vicar of *Thornborough* for the time being, in full discharge of all tithes in kind arising from the *Chantry Pastures*; and that therefore no tithes in kind were due and payable for the same.

IT IS THEREUPON ORDERED BY THE COURT, that the defendants shall be dismissed of and from the bill, with their costs to be taxed by the deputy remembrancer of this court.

R. EYRE.
RO. PRICE.
F. PAGE.

TRIN. TERM,
10. GEO. I.

PHILLIPS against SYMES; et à Contra.

Dorsetshire, 15th June 1724.

The rector of
Stoke Abbotts, in
Dorsetshire,
claims all tithes,
great and small,
in kind.

S. C. Bunb. 171.
S. C. Rayn. 207,
208.

THE bill stated, that the plaintiff, for ten years past, had been lawful rector of the parish church of *Stoke Abbotts*, in the county of *Dorset*, and was entitled to all the duties, tithes, and profits, that his predecessors were entitled to, and particularly to the tithes of corn, hay, calves, sheep, lambs, wool, milk, eggs; chickens, turkies, geese, pigs, apples, pears, hops, acorns, mills, woods, furze, heath, and tithe of agistment of barren cattle, and cattle not used for the pail, plough, or saddle, or by the owners thereof, and all other great and small tithes in the said parish; that the defendants were, and had been, parishioners, inhabitants, owners, and occupiers, of garden, pasture, and meadow grounds, in the said parish, and had depastured thereon milch cows, shorn sheep, partly in, and partly out of the said parish, and had yearly milk and calves, and also had apples, pears, and other fruits from their gardens, and great profit from the sheep shorn out of the parish; the tithes of all which were worth twenty pounds a-year, as would appear by certain books of former rectors, in the defendant's possession.

The defendants admitted that the plaintiff was rector, and ought to enjoy all the tithes belonging to the said rectory, except the tithes of calves, milk, gardens, and sheep shorn out of the parish, for which they insisted that certain *modus*es ought to be paid; and except also the tithes of wood and furze, save when furze was sold, and such coppice wood where there never was any feeding or depasturing, of which they insisted no tithe at all or *modus* was due or payable. They also admitted, that all the other tithes ought to be paid in kind; that the plaintiff was entitled to twopence a-year for every inhabitant above sixteen years old for *Easter* offerings; and that they had the books mentioned in the bill to be in their custody, and were ready to produce them. They said, that they did not know the value of the wood which had been cut by them; and admitted, that they had not paid the plaintiff any thing for the tithes of any wood, furze, *Easter* offering, calves, milk, lambs, garden stuff, or the wool of sheep shorn out of the parish; but said, that they were ready to pay him the *modus*es, and twopence a piece for *Easter* offerings, and that they had frequently tendered the same; and they insisted on the following *modus*es, viz. eightpence a-year for every cow; fourpence a-year for every heifer, in lieu of the tithes of their calves and milk; one penny for every garden, in lieu of garden stuff; and three shillings and fourpence a-year for every score of sheep shorn out of the parish, and so proportionably for any less time than a year, or number of sheep or lambs, in lieu of the tithes of the wool of such sheep and lambs; and that no tithes of such cows, heifers, sheep, or gardens, had been ever paid in kind.

of sheep shorn out of the parish, in lieu of wool and lambs.

The defendants, with other parishioners, filed their *cross bill* against *Phillips* to establish the *modus*es; and added, that they were payable at *Easter*; and that twopence was payable for *Easter* offerings; and stated, that the rector, by immemorial custom, ought to keep a bull for the use of the landholders. They also stated, as to coppice wood, underwood, and furze growing in the said parish, that by the like ancient custom no tithes were to be paid thereof, except when the coppice or place where the underwood grew was fed with cattle, and the furze was sold: And they added, that the rectors of the parish, from time whereof the memory of man was not to the contrary, had always conformed themselves to the said customs, and had received from the parishioners the said sums and *modus*es, in full discharge of the aforesaid tithes.

The rector denied that he had any knowledge of such *modus*es as the defendants had, by their *cross bill*, pretended was payable in lieu of the said tithes; but he admitted the custom as to

PHILLIPS
against
SYMES;
et c. Contra.

The defendants admit, that he is entitled to all the tithes in kind, except of calves, milk, garden stuff, sheep shorn out of the parish, furze cut but not sold, unfed coppice woods, and wool;

and insist on the following *modus*es:

2d. in lieu of *Easter* offerings;
8d. a-year for a cow, and 4d. for a heifer, in lieu of calves and milk;

1d for a garde ;

3s. 4d a-year for every score

The defendants file a *cross bill*, and say, the said *modus*es are payable at *Easter*; that the rector ought to keep a bull; and that no tithes are due for furze unfed, or for coppice wood unfed.

The rector denies the *modus*es, but admits he is to keep a bull, and that 2d. is due for *Easter* offerings.

the

PHILLIPS
against
SYMES;
et c. Contra.
The proofs read.

the keeping of a bull, and the *Easter* offerings, as stated in the cross bill.

The plaintiffs in both causes replied; and the defendants rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause, and on debate of the matter;

The tithes of
furze and coppice
wood decreed,

IT IS ORDERED BY THE COURT, that the defendants in the original cause do account with the plaintiff for the value of the tithes of furze and coppice wood arising and growing on the several lands occupied by them within the said parish of *Stoke Abbots*, or the titheable places thereof, during the time demanded by the bill; and that the deputy remembrancer do take the said account: the plaintiff to have his costs of the original cause, so far as the same relates to the demand of tithe furze and coppice wood.

with costs.

The original bill
dismissed as to
all the articles
for which the
defendants set
up *modus*.

AND IT IS FURTHER ORDERED, that the said original bill, as to all other demands therein contained, and against which the several defendants set up and insist on the *modus* before mentioned, shall be dismissed; and the defendants shall account with the plaintiff in the original cause, according to their *modus*, and have their costs of the original cause, so far as relates to the said demands, to be taxed by the said deputy.

The *modus* de-
clared to be
good, and the
rector decreed to
keep a bull.

AND IT IS FURTHER ORDERED BY THE COURT, as to the several *modus* before mentioned in the cross bill to be set up, and insisted on by the plaintiffs in the cross cause, in discharge of tithes in kind, and the custom in keeping a bull, and for *Easter* offerings, that the same be and are hereby established by this court, with costs to be taxed by the said deputy remembrancer of this court.

The cause re-
heard.

On the twenty-seventh of *January* 1725, a re-hearing having been granted, counsel was heard on both sides, and the cause was ordered to stand over for another argument. On the third of *February* 1725 it came on again; and after hearing counsel for all parties;

The tithes of
wool, lamb, and
Easter offerings
decreed,

THE COURT decreed the defendants to account for the tithes of wool and lambs, and for *Easter* offerings; and ordered, that the cross bill be dismissed as to wool, lambs, and *Easter* offerings, without costs on either side,

R. EYRE.
RO. PRICE,
F. PAGE.
JEFF. GILBERT.

GUMLEY *against* BIRT and FOUNTLERÖY,TRIN. TERM,
10. GEO. 1.*Middlesex, 11th June 1724.*

THE bill stated, that *R. Collier*, clerk, for four years past, had been lawful vicar of *Isleworth*, in the county of *Middlesex*, and was, by endowment or otherwise, entitled to all the small tithes arising therein; that the said *R. Collier*, being so seised and entitled, did, by indenture of lease, dated the twenty-seventh of *October* 1718, demise to the plaintiff all the vicarage tithes, except as in the said lease is excepted, to hold to him, his executors, administrators, and assigns, from year to year, at eighty pounds a-year; payable at or before *Christmas* yearly, and two fatted hogs of thirty stone weight each, over and above the said rent; that during the said lease, the defendants had held several farms and lands in the said parish, and had agisted numbers of dry and barren cattle, and had kept on the said lands cows, sheep, calves, pigs, geese, lambs, fowls, fruit, and garden wares, and had had other titheable matters and things; the tithes of all which amounted to a considerable sum, which was due to the plaintiff, and ought to have been paid to him, or some satisfaction for the same; that to deprive him of his tithes of lambs and wool, at the time of yeaning and shearing the sheep the defendant removed them into another parish, where the tithes were not paid in kind, but only some small sum in lieu thereof; that the defendants had also held several gardens, lands, and nurseries; and that they had also pease, beans, carrots and turnips; that the plaintiff, being justly entitled to the several titheable matters, hoped the defendants would have paid him the same, but which they had refused to do, under several pretences of a *modus*, or that the tithes of pease and beans, which were set or drilled in rows, or that were hand weeded and hoed in a gardenlike manner, belonged to the lessee of the great tithes. The bill therefore prayed a full discovery of the quantities and values of the said tithes, and an account and satisfaction for the same.

The impropriator of *Isleworth*, in *Middlesex*, and not the vicar, is entitled to the tithes of pease and beans, whether gathered green or ripe, and to all the tithes of the glebe lands.

S. C. Bunb. 60.
S. C. Rayn.
206.

The defendants set forth the titheable matters and things which they had on their said lands; and said that the reason for not paying their said tithes was, that some part thereof were *glebelands*, and other part *demefne lands*, belonging to *Sion*, for which there was a *modus* payable. They also said, that the tithes of pease and beans so sowed belong to the impropriator of the parish, or his tenants, and had never before been demanded by the vicar. They also said, that the dean and canons of *Windſor* were seised of the said vicarage, and that the plaintiff's lessor and his predecessors had usually received the tithes of fruit trees and garden stuff arising within the said parish, and had often compounded for the same.

GUMLEY
against
BURT AND
FOUNTLEEROY.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon reading a decretal order in this court, in the seventh year of *William the Third*, *Stevens v. Martin* (a) ; and another decretal order, in the tenth year of *Queen Anne*, *Nicholas v. Elliot* (b) ;

THE COURT declared, that the tithes of all pease and beans growing in gardens, orchards, and common fields within the said parish of *Isleworth*, gathered either green or ripe, are due to the impropiator of the said impropriate church of *Isleworth*, or to his undertenants, and not to the vicar there, or his undertenants ; and that all manner of tithes whatsoever upon the *glebe land*, in the said parish of *Isleworth*, do likewise belong only to the said impropiator, or his undertenants ; and that therefore the defendant *Burt* ought not to account with the plaintiff for the same or any of them.

AND IT IS THEREUPON ORDERED BY THE COURT, that the defendant *Burt* shall come to an account with the plaintiff, before the deputy remembrancer of this court, only for such other small tithes as were growing or arising within the defendant's gardens in the said parish of *Isleworth*, which the said defendant held as undertenant.

And as to the rest of the plaintiff's demands for which he prays an account and satisfaction from the defendant *Burt*,

THE COURT doth order and adjudge, that the bill do stand dismissed, with costs to be taxed, for the said defendant, by the deputy remembrancer.

R. EYRE.
RO. PRICE.
F. PAGE.
JEFF. GILBERT.

(a) Vol. I. page 357.

(b) Vol. I. page 521. and see *Nicholas v. Austen*, ante, page 10, 139, 141.

HILARY TERM
11. GEO. 1.

GOULD against PEARCE.

Devonshire, 23d February 1724.

Several *modus*es payable to the vicar of *Staverton*, in *Devonshire*, in lieu of the tithes of cyder, perry, milk, calves, colts, honey, wool, lambs, and fire wood, established.

THE bill stated, that the plaintiffs are, and for many years past had been occupiers of land in the parish of *Staverton*, in the county of *Devon* ; that, time out of mind, there had been, and now are, divers *modus*es payable to the vicar in lieu of tithes in kind, *viz.* FIRST, twopence for every hoghead of cyder or perry, made of any apples or pears growing or renewing in any orchard or garden within the said parish and the titheable places thereof, for and in lieu of all tithes in kind of such apples or pears made into cyder or perry, and no more, the said *modus* to be

COULD
againſt
PEARCE.

be paid at *Eaſter*, or at any time after pounding the apples and pears before *Eaſter*, upon reaſonable requeſt made by the vicar of the ſaid pariſh. **SECONDLY**, fourpence yearly for every milch cow having a calf within the ſaid pariſh and titheable places thereof, for and in lieu and ſatisfaction of the milk or whiteſole, and for the calf or calves of ſuch cow, and no more. **THIRDLY**, twopence yearly for every fewer or barren cow, having no calf, for and in lieu and ſatisfaction of all tithes of the milk or whiteſole, and of the paſture of ſuch cow, and no more. **FOURTHLY**, one penny for every colt weaned within the ſaid pariſh and titheable places thereof, and no more, in lieu and ſatisfaction of all tithes of and for colts foaled and fallen there. **FIFTHLY**, twopence for every hive or butt of bees burnt or broke up within the ſaid pariſh and titheable places thereof, for and in lieu and ſatisfaction of and for all tithes of the honey and wax thence coming and ariſing, and no more. **SIXTHLY**, that the ſaid ſeveral *modus*es, are to be paid yearly at the feaſt of *Eaſter*. **SEVENTHLY**, that the ſaid occupiers of land are to bring, deliver, and leave at or in the chancel or pariſh church of *Staverton* aforeſaid, for the uſe of the vicar for the time being, at *Midſummer*, or on the *Sunday* or holiday next following, firſt giving notice thereof at the houſe of the ſaid vicar, the tenth fleece of all wool ſhorn from ſheep kept and depaſtured within the ſaid pariſh and titheable places thereof, yearly before *Midſummer*, in lieu of the tithe of ſuch wool. **EIGHTHLY**, that they are to bring, pay, deliver, and leave bound in the church-yard of the ſaid pariſh church of *Staverton*, over againſt the church porch there, on *Saint Mark's Day*, or on the *Sunday* or holiday then next following, for the uſe of the vicar for the time being, the tenth lamb yearly in kind, firſt giving notice thereof at the houſe of the ſaid vicar, in lieu of the tithes of lambs. **NINTHLY**, that they are to pay the vicar, for the time being, yearly at *Eaſter* one penny, commonly called *the hearth penny*, in lieu and ſatisfaction of the tithes of all wood and fuel cut on their lands, and ſpent and burnt in their houſes in the ſaid pariſh. The bill further ſtated, that the defendant had been vicar of the ſaid pariſh for above fifty years, and at the time of his institution knew that the ſaid *modus*es and customary payments were juſt and lawful, and as ſuch, of right, had been, time out of mind, payable and paid; that *John Horſham*, a former vicar, in the year 1631, had attempted to defeat the ſaid *modus*es, which occaſioned a ſuit in chancery for the examination of witneſſes, *in perpetuam rei memoriam*, to eſtabliſh the ſame; that the defendant knew the ſame, and made compoſitions with the owners and occupiers of the lands within the ſaid pariſh, for certain ſums of money, to be paid in lieu of all tithes and duties payable to the vicar, due regard being had in the making ſuch compoſitions to the ſaid ſeveral *modus*es, and customary payments, though without making mention of the ſaid partiſular *modus*es and customary

GOLD
against
PEARCE.

tomary payments, or any of them; that the occupiers of lands within the said parish, who were parties to the first compositions so made above fifty years since, and those who have held the same lands, and the plaintiffs, had all along retained their tithes under the payment of the yearly sums compounded for and agreed to be paid to the defendant by such original compositions, in lieu of such *modus*, until *Michaelmas* 1720; that on the twenty-fifth of *March* following, the plaintiffs gave notice, that they would pay such of their tithes in kind, as ought to be paid in kind, and such customary payments in lieu of tithes, as had been used and accustomed to be paid as aforesaid; and that on *Lady Day* 1722, the said defendant sent several receipts for the same, signed by him, and attested by two witnesses, as stated in the bill. The bill therefore prayed, that the defendant might answer the premises, and that the several *modus* and customary payments as aforesaid, and all others as shall appear to be due within the said parish may be established.

The defendant said, that he did not know that there had been time out of mind, or that there now were any *modus* or perpetual customary payments payable of right by the occupiers of lands within the said parish in lieu of tithes, particularly the pretended *modus* or customs stated in the bill; or that there was any *modus* established in the said parish. He denied, that at his institution he was satisfied, that the several *modus* by the bill pretended were just, lawful, or payable time out of mind. He said, that he had made compositions with the plaintiff's ancestors, and those whose estates the plaintiffs had in the said parish, and all other the occupiers of lands therein, whereby he had agreed, that they should retain the tithes and duties payable to the vicar, for certain yearly sums, to be paid in lieu thereof; but denied, that any regard was had in the making such compositions to any of the pretended *modus* or customs as stated in the bill. He said that he believed, that from *March* 1721, the plaintiffs might give him notice that they would pay their tithes in kind, but not that they would pay any customary payments in lieu thereof; that from that time they had paid tithes in kind of several things, but had refused to pay tithes in kind of others, under pretence of the said *modus* or customary payments.

The plaintiffs replied; the defendant rejoined; and divers witnesses were examined on both sides; and upon reading the proofs taken in the cause; several receipts given by the defendant to the plaintiffs; three books, one beginning in 1630, and the other two intitled on the frontispiece thereof "*Liber Compositionis, A. D. 1638*;" also instruments beginning 1640, being the books of the former vicars, containing several entries of several *modus* and customary payments in lieu of tithes above mentioned; an exemplification under

the

the seal of the court of chancery, dated the third of *December*, the eighth year of *Charles the First*; the bill, answer, replication, and depositions in the cause of *Roue v. Horselman, clerk*; and on hearing what could be alledged by counsel on both sides, and on full debate;

GOVED
against
PEARCE,

IT IS ORDERED BY THE COURT, that the several and respective *modus*es and customary payments in the bill mentioned, shall be, and are hereby absolutely established, ratified, and confirmed, with the plaintiff's costs, to be taxed by the deputy remembrancer, to whom it is hereby referred to tax the same.

R. EYRE.
RO. PRICE.
F. PAGE.

JONES against BARRET.

Sussex, 22d February 1724.

HILARY TERM
II. GEO. I.

THE plaintiff, as vicar of *West Dean cum Binderton*, and the hamlet of *Chilgrove*, in the county of *Sussex*, filed his bill stating, that about the seventeenth of *January* 1714, the vicarage was void of an incumbent; that it so continued until his induction; that the defendant had obtained from the *Bishop of Chichester* a *sequestration* about the first of *September* 1714, whereby he entered upon and took possession of the said vicarage, and received the profits thereof, from the seventeenth of *January* 1714, to *Michaelmas* 1719; that the said profits amounted to the yearly sum of sixty pounds, or upwards; that the plaintiff, about the twenty-fifth of *November* 1719, was duly presented and legally inducted into the said vicarage, and thereby became not only entitled to the growing tithes and profits, but also to those which had been received by the defendant; that he had offered to make the defendant any reasonable allowance for serving the cure, and as *sequestrator*; but that he had rejected the offer and had refused to come to any account. The bill therefore prayed, that the defendant might be decreed to account, and to pay him the balance thereof, with legal interest on the same.

The vicar of *West Dean*, in *Sussex*, claims the profits which the defendant had received as *sequestrator* of the vicarage.
S.C. Bunb. 192.
S.C. Rayn. 204.

The defendant said, that the vicarage was on the seventeenth of *January* 1714, and so had been for many years before void of an incumbent; that *C. Richardson*, clerk, had held the same by *sequestration* for forty years or more; that after the death of the said *C. Richardson*, he had a *sequestration* from the bishop of the diocese, dated the twenty-ninth of *January* 1714; and that by virtue of such *sequestration* he had entered upon

The defendant admits, that he was only *sequestrator*, but says, that being a clergyman, he ought not, according to general practice, to account for the profits.

JONES
against
BARRETT.

upon the said vicarage, and taken possession, and received the profits thereof, from the twenty-ninth of *January* 1714, to *Michaelmas* 1719; that it had been a generally received opinion amongst clergymen, that clergymen holding by sequestration small vicarages, which had been held by sequestration for many years before, were to have the profits for taking care of the cure; that he not knowing of any law to the contrary, or any instance where such clergyman sequestrator had been called to account for the profits by the next incumbent, had kept no account of the profits of the present vicarage, nor was any demanded by the plaintiff till three years after his induction, but that if he was to account, he hoped he should have a proper allowance, and be also repaid what he had laid out in repairs, &c.

The evidence
read.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon reading the proofs in the cause;

The matter re-
ferred to the de-
termination of
the bishop of the
diocese.

IT IS ORDERED BY THE COURT, that this cause be adjourned over; and that, in the mean time, it be referred to the right reverend *Edward, Lord Bishop of Chichester*, to consider of the matter, and to make such final determination therein as his lordship shall think just and reasonable; and that all parties concerned shall abide by such determination, *they having consented thereto in court*; and that such final determination, as the aforesaid lord bishop shall make in the premises, shall hereafter, by consent of all parties, be made the decree of this Court (a).

THE COURT FULL.

(a) It was in this case objected on behalf of the defendant, that the bishop ought to have been made a party to the bill, for that by the statute 28. Hen. 8. c. 11, a sequestrator is accountable to

the bishop for the profits he receives during the sequestration; and it is said by Mr. Bunbury, that the Court seemed to think, that the bishop ought to have been a party to the bill.

HILARY TERM
21. GEO. 1.

WATTS against JACKSON.

Nottinghamshire, 22d February 1724.

The vicar of
Warworth, in
Nottinghamshire,
is entitled to the
small tithes of
Banks Carr, in
kind.

THE vicar of *Warworth*, in the county of *Nottingham*, claims the vicarial tithes of the parish, and particularly the tithes of hops on a parcel of ground called *Banks Carr*.

The defendants said, that they had jointly held, planted, and stocked with hops the said *Banks Carr*, of which they are severally seised in fee; and that they had not set out any tithes on the south or south-west part of the said ground, viz. from the gate at the foot of, or near a hill called, *Melpin Hill*, to the great drain where an engine is placed, containing twenty acres; for that the said south and south-west part of *Banks Carr*, formerly called *Stiriop Carr*, from the gate to the drain, were immemorially

rially part of the possessions of the late dissolved monastery of *Roche*, in the county of *York*; and that the abbot and convent, and their predecessors from the foundation and at the dissolution thereof, were of the *Cistercian order*, and discharged from the payment of tithes; that the abbot and convent, on the fourteenth of *March*, the thirteenth year of *Henry the Eighth*, surrendered the same into his hands, whereby he, by the 31. *Hen. 8. c. 12.* became seised of the said piece of ground and monastery, &c. in right of his crown, acquitted of the payment of tithes; that the defendants are lawfully seised of the freehold of the said *Banks Carr*, and ought to enjoy the same discharged from the payment of tithes.

WATTS
against
JACKSON.

Upon reading the depositions of witnesses taken in the cause, and also a surrender, dated the fourteenth of *March*, the thirteenth year of *Henry the Eighth*, made by the abbot and convent of the monastery of *Roche* aforesaid, and on full debate of the matter,

IT IS ORDERED BY THE COURT, that the defendants shall account with the plaintiff for the value of the tithes of the said hops; and for all the vicarial tithes and other titheable matters and things they had on *Banks Carr*, and other lands and tenements in the said parish.

GILBERT, Chief Baron.
PAGE, Baron.
HALE, Baron.

BIBY against HUXLEY.

Bedfordshire, 22d February 1724.

HILARY TERM
II. GEO. I.

THE rector of *Whipsnade*, in the county of *Bedford*, claims from the defendant, as executor to his father, and on his own account, since his father's death, the tithes of wood-lands cut down and made into firewood, and sold for fuel.

The defendant admitted that his father, *J. Huxley*, held divers acres of woodland; that he died in the year 1718; that from *Michaelmas* 1719, he, the defendant, had enjoyed five woodlands called *Deadmany Woods*, which are esteemed timber woods, and are alternately enclosed for the growth of timber, except only a few fallows, hollies, and a little underwood growing therein, which bear but a small proportion to the timber in the woods; that he also occupied another coppice, called *Fairlefs Spring*; that during the time aforesaid he had felled in *Deadmany Woods* several parcels of timber trees of twenty years growth, and had dug up several roots of timber trees there, and made the same into stacks, and the tops into faggots, some part whereof

The rector of *Whipsnade*, in *Bedfordshire*, is entitled to the tithes of wood felled in *Deadmany Wood*, and *Fairlefs Spring*, except of oak, ash, maiden trees, above twenty year's growth, and beech wood proceeding from stools of maiden trees above twenty years growth.

S. C. Bunb. 192.
S. C. Rayn. 201.

BINY
against
HUXLEY.

whereof with the bark he had sold, and the other part he had used for repairs or fuel; and that, during the time aforesaid, for the preservation of the woods, he had pruned several timber trees therein, which he also made into faggots and sold, and had set forth a true account thereof in a schedule to his answer, and that the tithes were worth four guineas; but he insisted, that no tithes are due to the plaintiff for any wood cut by him in *Dead-many Woods*, or by him sold out of the said woods in stacks, faggots, or otherwise since *Michaelmas* 1719, for that they being esteemed timber woods, and chiefly oak, beech, and other woods used for timber, the body with the prunings, lops, branches, barks, roots, and offals thereof, by law are exempt from tithes. He admitted, that *Fairless Spring* is liable to tithes, but denied that there was any thing due to the plaintiff for the same, he having set out the tithes thereof since *Michaelmas* 1719, or given satisfaction for the same. He said, that the usual method of disposing of wood and timber out of his wood grounds, was by parcels or heaps, and not by loads or feet, and that he had set forth a full account of all the wood he had cut therein.

The plaintiff replied, and thereby waived all further proceedings for the tithes which became due in the defendant's father's life time, and for the tithes of wood in *Fairless Spring*; and the defendant rejoined; and witnesses were examined on both sides; and upon reading the depositions taken in the cause, and on debate of the matter;

IT IS ORDERED BY THE COURT, that the defendant do come to an account with the plaintiff for the values of the tithes of wood, for the time in the bill (except for oak, ash, and maiden trees of beech above twenty years growth), and beech wood (a) proceeding from stools originally maiden trees above twenty years growth; that as to the tithes of asp trees, or any other matter if any difficulty shall appear, the same shall be reported specially; and that the deputy remembrancer do take the account, and that the costs be reserved.

THE COURT FULL.

(a) It is said, that the question in this case was whether beech is esteemed timber in the county of Bedford, and that an issue was directed to try the same, S. C. Bunb. 192. But it appears

upon inspection of the exchequer chamber book, that the words "*Referred to a trial at law whether*" are struck out; and therefore, it seems that no issue was ultimately directed.

MILARY TERM
II. GEO. I.

DOWNES against MOORMAN; et c. Contra.

Southampton, 11th February 1724.

The rector of
Bonchurch, in
Hampshire, is not
entitled to any
tithes from *Lowcombe Farm*; but the same belong as a portion of tithes in gross, to the grantee of the crown of this manor of *Lowcombe*. S. C. Bunb. 189. S. C. Rayn. 202.

THE plaintiff, as rector of *Bonchurch*, with the chapel of *Shankling*, in the *Isle of Wight*, and diocese of *Winchester*, annexed in, and the county of *Hants*, filed his bill, stating that he

is, and ever since *February* 1719, had been rector of the parish, and well entitled to have and receive all the tithes arising therein; that the defendant, from the twenty-ninth of *September* 1721, had occupied a farm formerly called *Lovetcombe*, but now called *Luccombe Farm* in the said parish, and had corn, grain, wheat, barley, oats, pease, and hay growing thereon, which he had cut, mowed, gathered, and carried away, without setting out the tithes, or paying any thing in lieu thereof; that he had also kept sheep, calves, and other titheable cattle, and pigs, geese, poultry, and other titheable matters on the said farm, whereof the plaintiff ought to have had tithes; but that the defendant had refused to pay the same, pretending that the said farm was tithe free. The bill therefore prayed, that the defendant may answer the premises, and come to an account for the tithes.

DOWNES
against
MOORMAN;
et c. Contra.

The defendant admitted, that he had held the farm called *Luccombe Farm*, in the said parish, since the twenty-ninth of *September* 1721; but insisted, that no tithes were due or payable for the same; for that the abbot of *Quarr*, in the *Isle of Wight*, long before, and at the dissolution of the abbey of *Quarr*, was seised in fee of the said manor, messuages, farm, and lands; and of all manner of great and small tithes happening or arising therefrom, as of a portion of the tithes in gross; that upon the dissolution of the said abbey the said farm, tithes, and premises became vested in *Henry the Eighth*, his heirs, and successors by virtue of the statute 27. *Hen. 8.* intitled "An Act for giving all monasteries to the king, which have not lands of two hundred pounds per annum;" that *Henry the Eighth* died so seised of the said premises and tithes; and that thereupon the same descended to *Edward the Sixth*, who, being so seised, did, in consideration of one thousand seven hundred and eighty-nine pounds, seven shillings, and ninepence, paid to him by *T. Reeve* and *G. Cotton*, by his letters patent, dated the eighteenth of *May*, in the seventh year of his reign, grant the same to them, their heirs, and assigns for ever; that the said *T. Reeve* and *G. Cotton* became seised of the said farm, tithes, and premises in fee, and enjoyed the same; and being so seised, on the twentieth of the said *May*, conveyed the same to *W. Colnett*, his heirs, and assigns for ever, who died so seised; that the premises vested in *B. Colnett* his son and heir, who became likewise seised thereof, and enjoyed the same; that the said *B. Colnett*, by deed, dated the twentieth of *September* in the forty-fourth year of *Elizabeth*, conveyed the same to *M. Knight*, his heirs, and assigns for ever, in like manner, who became seised in fee thereof, and died seised of the same; that the said premises descended to *T. Knight*, his eldest son and heir, who conveyed the same to *T. Knight* his son; that upon the death of the said *T. Knight*, the same was vested in *R. Knight*, the son and heir of the said last mentioned *T. Knight*, who with his under-tenants had

DOWNES
against
MOORMAN;
et c. Contra.

had quiet enjoyment thereof till the fourteenth of *June 1721*, when he demised the said farm to the defendant, to hold from *Michaelmas*, for twenty-one years, at one hundred and thirty-five pounds a-year; that he, the defendant, had taken the said estate to farm, under an assurance of its being tithe free; and that he would not have given so much a-year for it, over and above the value of the tithes; that the said *R. Knight* died, and that the premises, subject to the defendant's lease, are vested in *Anne Knight* and *Sarah Knight* children and coheirs of the said *R. Knight*, whose inheritance is affected by the plaintiff's demand; and that therefore they should have been parties to this suit; that he, the defendant, by virtue of the said demise, had held the said estate, without setting out any tithes, or paying any composition for them; for that all the tithes, both great and small, within the said manor and hereditaments, having been always quietly held by the abbot of *Quarr*, and his predecessors, by *Henry the Eighth*, by *Edward the Sixth*, by his patentees, and by those claiming under them, as a distinct portion of tithes; and as no tithes or composition having been paid to any of the rectors of the said parish, for the lands now in the defendant possession, but having always been tithe free, they are, by the ways and means before-mentioned or otherwise, exempted from the payment of tithes, or any composition for the same: and he set forth a true account of all titheable matters, both great and small, together with the values thereof, that had accrued from the said farms and premises during the time demanded by the bill.

The defendant, with *Ann Knight* and *S. Knight*, filed their cross bill against the plaintiff, and *M. Rolfe*, and stated their title as in the defendant's answer is before set forth; and that the said farm, lands, and premises had always been held and enjoyed by the said abbots; by the crown; by those holding under the crown; and by their tenants freed and discharged from the payment of any tithes in kind, or any composition in lieu thereof, to the rector for the time being; praying to have peaceable enjoyment of the same against the said *Downes*, who, to disturb the plaintiff's possession of the premises and tithes, had combined with *Rolfe*, late tenant of the premises, to demand the tithes of the said farm from the plaintiff; that in *Trinity Term*, in the seventh year of his now majesty's reign, the said *Downes* exhibited his bill in this court against him, thereby praying a discovery of the titheable matters arising from the said *Lovecombe Farm* since his possession thereof; that he appeared to the said bill, and insisted, that the premises were tithe free, as against the rector; that the said *Downes* pretended there was no such grants or conveyances made as aforesaid, whereby the said premises are exempt from tithes, or that if there be, they reach no farther than payment of tithes in kind, and that there had been

always

always some *modus* paid to him and his predecessors in lieu thereof; but that the contrary is true: that the said *Downes* gives out that he obtained a decree against *Rolfe* in this court, whereby he was decreed to pay tithes (a); but that if such decree were obtained, it was by collusion, and ought not to affect the plaintiffs' right, as they were not parties to the same. The cross bill therefore prayed, that the defendants may answer the premises; that the plaintiff *Moorman* may continue in the enjoyment of the farm and premises free from tithes for the residue of his term; and that the exemption from payment of tithes, or right of receiving of them, may be established.

DOWNES
against
MOORMAN;
et à Contra.

The rector, *Downes*, answered and said, that the abbot of *Quarr* was, before the dissolution of that monastery, seised in fee of the manor and farm of *Lovecombe*, and of the messuages and lands thereto belonging; but whether he was seised in fee of the tithes thereof, as a portion of tithes in gross, he knew not, nor whether the manor lands and tithes did, upon the dissolution, by such means as in the bill are mentioned, become vested in *Henry the Eighth*, and so came down by mesne conveyances to the plaintiffs *Knights*, nor did he know whether the same had been enjoyed tithe free; but he insisted, that he, as rector of the said parish and chapel as aforesaid, was entitled to the tithes of the said farm. He admitted that, *Moorman* having neglected to pay the tithes, he had, in the year 1723, filed his bill against him; that he answered thereto; that he, the plaintiff, replied, and insisted, that tithes in kind are payable for the farm in question; but he said, that he did not know whether any had been ever before demanded; and averred, that the decree which he had obtained, as in the bill mentioned, was obtained without collusion.

The defendant *Rolfe* answered and admitted, that *Moorman* had been in possession of the said farm ever since the ninth of Sep-

(a) On the 20th of February 1722, Hilary Term, 9 Geo. 1. *Downes* filed his bill against *Rolfe*, as occupier of *Lovecombe Farm*, claiming all tithes arising thereon. The defendant pleaded a grant of the said farm, by letters patent, dated at *Westminster*, the 18th of May, in the seventh year of *Charles the First*; that the said farm was part of the abbey of *Quarr*; that the abbot, at the time of the dissolution of the said abbey, the same being one of the greater monasteries, held the same by the name of *Lovecombe Grange*, exempted from the payment of tithes, or any thing in lieu thereof; and that she had never paid any tithes for the same, or

had ever heard that any tithes had ever been paid for the same. The plaintiff replied; the defendant rejoined; and several witnesses were examined on both sides; and upon opening the bill, and reading an affidavit of *subpœna* to hear judgment; and no counsel appearing for the defendant; THE COURT, on reading the defendants answer, ordered, *nisi*, the defendant to account with the plaintiff, for the tithes demanded by the bill. The remembrancer, on the 5th of December 1723, reported, that 17l. 1s. were due for the tithes; and no person appearing for the defendant, the report was confirmed.

DOWNES
against
MOORMAN;
et c. Contra.

September 1721, when her interest expired; and said, that he believed the said farm was tithe free, or that the tithes thereof belonged to the *Knights*. He admitted, that the decree was made as in the bill is mentioned, but said, that the cause was heard *ex parte*; and that she was now in custody for non-performance of the same. She further said, that she had held the said farm until Michaelmas 1721; and that she had never paid any tithes or composition for the same, nor had they ever been demanded until Downes became rector; and that the farm was always looked on as tithe free. She denied, that the said decree was obtained by fraud, but said that she had no money to defend the suit.

The plaintiff in the original cause replied; the defendants rejoined; and several witnesses were examined therein on both sides. The plaintiffs in the cross cause replied; and the defendants rejoined; and an order was obtained to read the depositions taken in the one cause, in the other; and on reading the depositions; a copy of the statutes, or some part of them, which relate to the government of the Bodleian library in Oxford; a copy of an agreement, dated 1289, between the *Monks of Lyr* and the *Monks of St. Quarr*; two several leases, one dated the twenty-ninth of September, the fourth year of *Henry the Seventh*, the other the sixth of August, the twentieth year of *Henry the Eighth*; three copies of the king's minister's accounts, one in the twenty eighth year of *Henry the Eighth*; another in the second year of *Edward the Sixth*; the third of the fifth year of *Edward the Sixth*; a copy of a grant of *King Edward the Sixth*, to Reeve and Cotton, dated the eighteenth of May, in the seventh year of his reign; a copy of the minister's accounts from Michaelmas the first year of *Mary*, to Michaelmas, the second year of *Philip and Mary*; a deed, dated the twenty-sixth of October, in the thirty-sixth year of *Elizabeth*; a grant, the twenty-seventh of June, the thirty-seventh year of *Elizabeth*; a licence, dated the first of April, the forty-fourth year of *Elizabeth*; another, dated the first of December, in the eighth year of *James the First*; a deed of settlement, dated the first of January the eighth year of *James the First*; a chirograph of a fine in Hilary Term, the eighth year of *James the First*; a copy of a commission in nature of a writ of *diem clausit extremum*, the return thereof, and an inquisition taken thereon, which inquisition was taken the sixteenth of January, the tenth year of *James the First*; an admission to *Thomas Knight* to hold *Lovecombe Farm*, &c. from the death of *M. Knight*, dated the first of July, the twelfth year of *James the First*; a deed dated the eighth of April, the twenty-first year of *Charles the First*; a chirograph of a fine in Easter Term in the same year; an exemplification of a recovery suffered in the same term; certain articles of agreement, dated the fourth of June 1721; and the

last will and testament of *Richard Knight*; and upon full debate of the matter; and hearing what could be alledged by counsel on either side;

DOWNES
against
MOORMAN;
et à Contra.

THE COURT declared, that the plaintiffs *Annie Knight* and *Sarah Knight* are entitled to the tithes in question, as of a portion of tithes in gross; and that the same belong to the said *Moorman*, he being lessee under them.

IT WAS THEREFORE ORDERED AND DECREED, that the bill, brought by the said *Downes* against the said *Moorman*, should stand absolutely dismissed out of this Court with costs, to be taxed by the deputy remembrancer of this Court.

And as to the other cause, wherein the said *Ann Knight*, *Sarah Knight*, and the said *Moorman*, are plaintiffs,

THE COURT declared, that it appearing, that the said plaintiffs *Ann Knight* and *Sarah Knight* were so entitled to the tithes in question, as of a portion of tithes in gross, they the said plaintiffs *Anne* and *Sarah*, and the said *Moorman*, their under-tenant, ought to hold and enjoy the said manor or farm and premises in question, freed and discharged from the payment of any tithes, or any thing in lieu thereof, to the rector of the said rectory; and that such right and discharge ought to be established; and that therefore the plaintiffs in that cause should be quieted in the enjoyment of the tithes, and of the said farm and premises, and freed and discharged from the payment of tithes, or any thing in lieu thereof, to the rector of the said rectory in respect of the said premises.

AND THEREUPON IT WAS ORDERED AND DECREED, that such right and discharge shall be established; and that the said plaintiffs should be quieted in the enjoyment of the said tithes, lands, and premises freed and discharged from the payment of tithes to the rector of the said rectory, or any thing in lieu thereof.

AND IT IS FURTHER ORDERED AND DECREED BY THE COURT, that the defendant do pay the plaintiffs their costs in the cross cause, to be taxed by the deputy remembrancer of this Court.

R. EYRE.
RO. PRICE.
JEF. GILBERT.

HILARY TERM
11. GEO. 1.

REYNALL *against* WILLS; *et à Contra.*

Devonshire, 8th February 1724.

The impropiator of the parish of *Broadcliff*, in *Devonshire*, claims two thirds of all the great and small tithes in the parish.

THE impropiator of the rectory and parish church of *Broadcliff*, in the county of *Devon*, claimed all great and small tithes in the said parish, or the titheable places thereof, and all oblations and obventions which had ever been reputed parcel of, or enjoyed within the said rectory; and prayed, that the defendants might answer and discover their titheable matters, and what *modus*es or compositions they set up and claimed, and give an account of their tithes, and a satisfaction for the same.

The defendants say, that the parish is divided into three parts; that the impropiator is entitled the tithes of two, and the vicar to the tithes of one of the said parts, alternately every year;

that they had many titheable matters, for which they had compounded; and had paid their composition to *Lady Day* preceding; that there is a *modus* of 2d. a hogthead, in lieu of the tithes of cyder and perry; 2d. for every hoard in lieu of tithe apples; 2d. for a heifer; 8d. for a calf; 1d. for garden stuff; 1d. for firewood; 2d. for *Easter* offerings; 1d. for a colt; 2d. for bees and honey; and 1d. for all poultry, except geese, the tithes of which are payable in kind;

The defendants *Moor, Harris, Wills*, and *R. Wils* said, that the plaintiff and his ancestors had a long time been lawful impropiators of the said rectory and parish church, and were well entitled to the profits and appurtenances belonging thereto; to the advowson of the said vicarage; and to all the great and small tithes of two third parts of the parish; that the vicar was entitled to the other third part; that the defendant *Long*, as vicar, had above twenty years received the same, or some customary payment in lieu thereof; that the parish was divided into three parts, called the north, the east, and the town quarters; that the tithes of one of the said quarters are alternately enjoyed by the vicar, and the other two by the plaintiff every year. They further said, that they had yearly divers crops of wheat, barley, and other grain, and other titheable matters, and had carried away the same without setting out the tithes thereof, during the years demanded in the bill, because they had compounded for the same; and they averred, that they had paid all their compositions to *Lady Day* last. They also insisted, that there was, and had been immemorially in the said parish, accepted and taken, amongst other *modus*es *decimandi*, or customary payments in lieu of the tithes, twopence a hogthead for cyder, and so proportionably; twopence for every hoard of apples; twopence for every milch heifer depastured in the parish; eightpence for every calf; and twopence for every ill heifer, or winter milch cow or heifer, or one that misseth calf, depastured there: a garden penny, for all garden stuff spent in their family; and a hearth penny, in lieu of tithes of all wood, furze, and broom used in their houses; twopence each of every inhabitant for himself, wife, and every unmarried child above sixteen, in lieu of *Easter* offerings; one penny for every colt fallen; twopence, in lieu of all tithes of bees, honey, and wax; and one penny in lieu of all tithes of eggs of all poultry (except geese, which were titheable in kind by their young) all payable at *Easter*. And they averred, that all the said *modus*es had been immemorially

paid

paid to the impropiator and vicar, their lessees, and tenants, and by them accepted and received, except when the landholders had been under composition. They denied, that they knew that either the said *modus* of twopence a hogthead for cyder, or that of twopence for every hoard of apples, had been uncertain or varied. They admitted, that the tithes of all cabbages and turnips sold in markets and elsewhere, ought to be paid in kind, or some recompence made for the same; and that they are not included in the *garden penny*. They further insisted, that it had been immemorially customary for those who had grounds in the parish, to mow and cut the grass every year at proper seasons, and the first math to ted and throw abroad into winrows, and to gather it up into cocks of equal bigness and quality, and to set out and divide every tenth cock for the tithe thereof; and that the plaintiff and his ancestors, as impropiators, and their lessees and tenants, and all the vicars had accepted of the same, except when the tithes were compounded for; and that no other tithe for grass, hay, aftermath, or pasture, had been demanded, paid, or insisted on, either by the impropiators or vicars, or by their lessees or tenants.

The defendant *Dennis* put in the same answer, as to his titheable matters; and further said, that he had occupied *Cullomb John Mills* and *Titterly Mills*; that they were ancient mills, and had been built before the memory of man; that no tithes had ever been paid for the same; and that he had never heard that any tenth dish, or other tenth of the profits of either of the said mills, or other tithe thereof was ever paid; and he insisted on the said customary payments of twopence a hogthead for cyder, and twopence a hoard for apples.

The defendant *Long* said, that he had been vicar of the parish for thirty years past, and as such was entitled to one third part of all the great and small tithes, or to some *modus*es or customary payments in lieu thereof; that he is also entitled to all offerings, obventions, oblations, and other duties; and that the plaintiff is entitled to the other two thirds of the tithes and other duties, the parish being divided into three quarters as aforesaid, and enjoyed alternately every year; that he and the impropiator had sometimes taken tithes in kind of corn and grain, but had frequently compounded for the same; that he knew not of the said two *modus*es for cyder and hoard apples; that the *garden penny* and *heartb penny* had only been paid and received in lieu of the tithes in kind of the persons paying the same; that these payments were made, for ought he knew, immemorially; but he denied, that such payments were allowed,

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that the tithes of cabbages and of turnips are not covered by the *garden penny*; that there is a *modus*, that the occupiers of grass land shall mow, ted, and make the same into winrows and grass cocks, and set out every tenth cock at their own expence, and that no tithes should be paid for the aftermath of the said grounds.

That they occupy certain mills which, being ancient mills, are tithe free.

The vicar denies the *modus* for cyder and apples, and says, that it extends only to apples which are the fruit of ancient orchards;

that the *modus* as to firewood does not cover firewood sold or used by other persons;

REYNALL
against
WILLS;
et d. Contra.

admits the *modus* as to cows, heifers, colts, calves, milk, honey, wax, and eggs;

denies that the custom of making the first crop into hay, exempts the after-math from tithes, and says he is entitled to the tithes of clover.

or understood to be in satisfaction of cyder, garden stuff, or fire-wood, sold or disposed of for money. He admitted, that the other customs and payments, for the tithes of agistment of every milch cow or heifer, milk, honey, wax, eggs, calves, and colts had been observed. He also said, that new planted or additional orchards, cyder, apples, milk, wood, furze fold, agistment and pasturage of bullocks, barren cattle, sheep, which were depastured a considerable time there, and then driven into another parish and shorn, the second math of clover, the seed thereof, hogs, pigs, and young apple trees, were all titheable; and he insisted on tithes in kind, great and small, or such composition as he should think fit to make. He said, that he had tithes of the first mowings of grass, when under no composition, but that such composition did not extend to the second math of grass, the tithes of which he insisted he was well entitled to receive; and also to the tithes of clover and seed, if not to the tithe of the second math of all clover grass when made into hay; and insisted, that the said two *moduses* for cyder and hoard apples, only extended to apples grown in *ancient orchards* and not in *new orchards*; and he gave his reasons.

The plaintiff replied; and the defendants rejoined,

The defendants and Sir H. Auckland file a cross bill against the impropriator and vicar, and admit that the tithes of wheat, barley, oats, beans, pease, &c. are payable in kind; but insist on the *moduses* stated in the answers to the original bill.

Sir H. Auckland, Bart. with the foresaid defendants, filed their *cross bill*, against Reynall, the impropriator, and Long, the vicar, setting forth that they were parishioners, landholders, owners, and occupiers of several manors, bartons, &c. in the parish, and the titheable places thereof, within the impropriation and vicarage of the said parish church, which were ancient, and had been so beyond the memory of man; that Reynall had been, for thirty years past, patron and impropriator of the church, and was thereby entitled to two thirds of all great and small tithes, *moduses*, or customary payments in lieu of tithes, arising in the parish; that the defendant Long, for thirty years past, had been vicar there, and as such was entitled to one third part of such tithes, offerings, and duties, the parish being divided into three parts, as before stated; that the parish consisted chiefly of arable lands; that the greater part thereof was sown with wheat, barley, oats, beans, pease, and such like grain, the tithes whereof had immemorially been answered and paid in kind to the impropriators, vicars, and their farmers; that there had been immemorially divers ancient and laudable customs, or customary payments taken and accepted by the impropriators and vicars and their farmers; and they insisted on the said immemorial *moduses* and customs, as set forth in their said bill, and as before stated in the said defendants answers. The cross bill therefore prayed, that the impropriator and the vicar might answer the premises, and the said *moduses* be established by the decree of this court,

The impropiator and the vicar appeared and answered ; the landholders replied ; the impropiator and vicar rejoined ; and witnesses were examined on both sides ; and on reading the proofs taken on both sides, in both causes ; and upon mature and deliberate debate of the matters in question, the Court directed a *trial at law*, upon the following issues :

REYNALL
against
WILLS ;
et 2 Contra.

The evidence
read, and issues
directed to try ;

FIRST, “ Whether there is a *modus* of twopence, for every hoghead of cyder, and so proportionably for a greater or lesser quantity of cyder, payable yearly at *Easter*, to the impropiator or vicar of the said parish, for the time being, according to their respective annual rights and proportions, or to their farmers or agents, for and in lieu and satisfaction of the tithes of all apples made into cyder, grown or renewed yearly within the orchards or lands of every landholder, owner, or occupier of orchards or lands within the said parish or titheable places thereof ?

1st, whether
there is a *modus*
of 2d. a hog-
head for cyder.

SECONDLY, “ Whether there is a *modus* of twopence, for every hoard of apples, had or kept by every landholder, owner or occupier of orchards or lands within the said parish, or titheable places thereof, payable yearly at *Easter*, to the impropiator or vicar of the said parish, for the time being, according to their respective annual rights and proportions, or to their farmers or agents, for and in lieu and satisfaction of the tithes of all apples grown or renewed yearly in such their orchards or lands, and which are not converted into cyder, but gathered in and kept for their hoard ?”

2dly, whether
there is a *modus*
of 2d. for every
hoard of apples.

THIRDLY, “ Whether there is a custom, or *modus decimandi*, that every inhabitant, landholder, owner, or occupier of any lands within the said parish and titheable places thereof, who has meadows or other grounds that produce hay, to mow and cut the grafs of such meadows and other grounds every year, at the proper and usual seasons of the year, at his or their own proper costs and charges, and the first math of such grafs, after it is so cut and mowed, to ted and throw abroad into weaks or winrows on the said ground, at his and their own proper costs and charges, and the same, at his and their own proper costs and charges, to gather, take up, and put into cocks, as justly and of equal bigness and quantity as can be done without fraud and deceit, and at his or their own proper costs and charges, to set out and divide every tenth cock so gathered together from the other nine cocks, to and for the use of the impropiator or vicar of the said parish, for the time being, according to their respective annual rights and proportions, or for their farmers or agents, in full satisfaction and discharge, and in lieu, as well of tithes of the first math of the said grafs grown, renewed, and increased in that year, as of all and singular the tithes of the

3dly, whether
there is a *modus*
to exempt the
aftermath from
tithes, in con-
sideration of the
owner making
the grafs of the
first math into
hay.

REYNALL
against
WILLS;
et c. Contra.

"grafs of any aftermath or after pasture of the said meadows
"or grounds in the same year grown, renewed, or encreased
"thereon?"

The other *modus*, as stated
in the defend-
ant's answer e-
stablished,

the impropriator
and the vicar
waiving all claim
thereto of tithes
in kind.

AND IT IS FURTHER ORDERED BY THE COURT, as to all other the *modus*es, insisted on by the defendants answer to the original bill, in bar of all tithes in kind, thereby demanded, for all other the several titheable matters and things in the said original bill mentioned, not comprehended in the said three issues directed to be tried, and prayed to be established by the said cross bill, that the said *modus*es shall be, and are hereby established, the said plaintiff in the original cause, and the defendants in the cross, waiving their pretended right to any tithes in kind, for any of the said other titheable matters and things demanded in and by the said original bill, and not comprehended in the said three issues.

The original bill,
as to the vicar,
dismissed with
40s. costs.

AND IT IS FURTHER ORDERED, that the defendant to the original bill, *R. Long*, shall be and is hereby dismissed, with forty shillings costs.

A verdict in fa-
vour of the *mo-
dus*es, as to 2d.
for a hogthead of
cyder, and 2d.
for a boord of
apples;

a verdict against
the *modus* as to
tithe hay.

A trial was accordingly had upon the said three issues, and upon THE FIRST and THE SECOND issues a verdict was given for the defendants, and the said *modus*es found by the jury to be the very same as were set forth and charged in the declaration, and hereinbefore set forth; but upon THE THIRD ISSUE a verdict was given for the plaintiff; the jury finding that there was no such custom or *modus decimandi*, as set forth in the said issue.

Upon reading the said decretal order of the eighth of February 1724, and an ancient decree made in this court, in the cause of the *Bishop of Exeter v. the parishioners of the parish of Shebrooke*; and also the *postea*;

The *modus*es, as
to cyder and ap-
ples, established.

IT IS ORDERED BY THE COURT, on the seventh day of July 1726, that the said two several *modus*es or customary payments, mentioned and expressed in the first and second issues, shall be, and the same are hereby established according to the prayer of the cross bill.

The defendant
ordered to ac-
count for the
tithes of after-
math.

AND IT IS FURTHER ORDERED, that the defendants in the original cause shall come to an account with, satisfy, and pay the plaintiff for the tithes of the second, or aftermath, or after-pasture of the grafs grown and renewed on the said defendants' meadows or grounds within the parish, during the time demanded by the bill.

The deputy to
take the account.

And it is referred to the deputy remembrancer to take the account, but no costs are to be paid on either side to this day.

RIVES,

RIVES, D. D. *against* FITZHERBERT.HILARY TERM
11. GEO. 1.

Staffordshire, 23d February 1724.

THE rector of Swinnerton, in the county of Stafford, claimed tithes of wood under twenty years growth felled in Swinnerton Park and the Harleys.

The rector of Swinnerton, in Staffordshire, claims the tithes of wood felled in Swinnerton Park and the Harleys,

The defendant said, that for seven years last past he had been, and still was, seised of Swinnerton Park and the Harleys, wherein are contained several acres of coppice wood lying in the said parish, in the hundred of Pyrebill; that since his being so seised, about February, in the year 1721, he cut and felled off and from the said coppice wood, one hundred and twenty-six cords and six feet of coppice wood, and two hundred and twenty-two cords of stack wood, which consisted all of oak; and also that he had cut several quantities of woods, the tithes whereof had been paid to the plaintiff, although he was not duly entitled to any tithes from the same; for he insisted, that no tithes are due for the said coppice wood and stack wood; for that the said coppice wood was upwards of twenty years growth at the time the same was felled and cut down, and the said stack wood consisted wholly of oak which had not been cut down in the memory of man, and of the roots of old timber trees which were not titheable. He also insisted, that in the hundred of Pyrebill there is, and time out of mind had been, a custom, that no tithes are payable upon the fall of or for any wood cut down and felled within the said hundred of Pyrebill; and that the ground upon which the said wood or trees were growing, and from which the said coppice and stack wood were felled, lie and are within the said hundred of Pyrebill.

The defendant says, that the grounds from which the wood was felled lie in the hundred of Pyrebill, in the said county; and that there is a custom to prescribe *in non decimando* for all wood felled in the said hundred.

THE COURT directed a *trial at law* upon this issue, "Whether there is a custom in the hundred of Pyrebill, in the county of Stafford, in prescribing *in non decimando* for the tithe of all wood cut or felled within the said hundred?"

An issue directed to try the custom.

The issue was accordingly made up; but the plaintiff would not try the same; and upon reading the decree, THE COURT ordered, that the issue be taken *pro confesso*, and the bill dismissed with costs, both at law and in equity.

The issue taken *pro confesso*, and the bill dismissed with costs.

RO. PRICE.
F. PAGE.
B. HALE.

BLACKETT,

TRIN. TERM,
11. GEO. 1.

BLACKETT, Bart. *against* FINNEY, D. D.

Durham, 24th June 1725.

The owners or occupiers of *Gayer's Field*, in the parish of *Ryton*, in the county of *Durham*, pay a *modus* of fourpence a score of ewe sheep depastured thereon, in lieu of the tithes of their milk, and not in lieu of the tithes of the wool and lambs of such sheep.

S. C. 2. Mod.

375.

S. C. Burd. 176.
C. Rayn. 212.
1100.

THE bill stated, that the plaintiffs, the *Blacketts*, being seised in their demesne as of fee, as tenants in common, of a parcel of land, called *Gayer's Fields*, in the parish of *Ryton*, in the county of *Durham*, had let the same to the plaintiff *Hafwell*, who, for seven years past, had been and was then in possession thereof as their tenant; that the owners or occupiers of the said field had never paid tithes in kind for any wool or lambs arising thereon to the rector of the parish of *Ryton*, or to any other person, but had always paid to the said rector or his farmer for the time being, fourpence for every twenty sheep depastured in the said fields, and so in proportion for a greater or less number, on the twenty-fifth of *April* in every year, as an ancient *modus* or prescriptive customary payment, in full satisfaction for the tithes of wool and lambs.

The defendant admitted that the *Blacketts* were seised of *Gayer's Fields*, as mentioned in the bill; and that the plaintiff *Hafwell* farmed the same of them; and insisted, that the owners or occupiers thereof had, time out of mind, paid, and of right ought to pay, to the rector or his farmer, fourpence for every twenty ewe sheep depastured yearly in the said field, and so in proportion for every greater or less number, upon the twenty-fifth of *April* in every year, as an ancient *modus* for the tithe of the milk of the ewes depasturing there, and not for and in lieu of the tithes of lambs and wool, as stated in the bill; that the milking of ewes in the said field, and elsewhere in *Ryton*, was anciently, and within memory, much used; and though of late in many places disused, yet that the said *modus* was still continued, not only in the said fields, but in many places in *Ryton*; and in all or most of the said places, the tithes of wool and lambs had been and were paid in kind, or some other satisfaction made, besides the fourpence a score, in lieu thereof; and that the owners of the said fields had anciently and frequently, besides the fourpence a score, paid tithes in kind, and compounded or made satisfaction for the tithes of wool and lambs for the said fields.

THE COURT directed a trial at law on the following issue,
“Whether fourpence in the score of sheep, and so in proportion
“for any greater or less number, be payable for the tithes of
“wool and lambs for the said *Gayer's Fields*, in the parish of
“*Ryton*, in the county of *Durham*, yearly, on *Saint Mark's Day*,
“or not?”

A trial was accordingly had; and after evidence given on both sides, the plaintiff was nonsuited.

The cause came on for further directions on the twelfth of December 1726; and upon reading the decree and *poslea*;

BLACKETT
against
FINNEY.

IT IS ORDERED, that the bill be dismissed, with costs both at law and in equity.

THO. PENGELLY.
B. HALE.
LAW. CARTER,
J. COMYNS.

EGERTON *against* STILL.

TRIN. TERM,
11 GEO. 1.

Kent, 7th June 1725.

THE rector of *Cowden*, in the county of *Kent*, claimed tithes, both great and small, in kind (wood only excepted), and also all oblations and *Easter* offerings payable by the inhabitants of the said parish, particularly the tithes of calves and sheep, since *Michaelmas* 1721,

The rector of *Cowden*, in *Kent*, claims *Easter* offerings, and the tithes of calves, lambs, and wool.

S. C. Bunb. 198. S. C. Rayn, 220.

The defendant said, that no *Easter* offerings were due; that he held arable, meadow, and pasture land in the said parish, and had kept thereon milch cows, the tithe milk of which the plaintiff had received in kind; that he had also a number of calves, but that no tithes ought to be paid for calves that died or were brought to the plough or pail; and he admitted, that he had not paid tithe for the other calves, because when he took the tithes of calves, lambs, and wool, in kind, he, the defendant, had carried on the call of those articles to the number of ten, and carried over the odd numbers till they should amount to ten. He further said, that one part of his lands in the said rectory is called *Rovens*, of which he had paid the tithe of the hay of the first crop; and that it was afterwards used for after-pasture to feed his cattle on; and he insisted, that no tithe was due for the after-pasture; and he set forth his other titheable matters and things and his tithe agistment; and denied, that *Easter* offerings were due,

The defendant says, there is no custom to pay *Easter* offerings, and that they are not due of common right;

that he paid one calf, one lamb, and one fleece in every ten, and no tithes for the odd numbers under ten; but that he carried them over until each article should amount respectively to ten.

The plaintiff replied, and said, that as to the tender of the tithes of hemp, and agistment of barren and unprofitable cattle, with the proportionable costs in the said defendant's answer mentioned, he was willing to accept the same; but as to all other demands of his bill, he would maintain them to be true: the defendant rejoined; and witnesses were examined on both sides.

The rector insists, that *Easter* offerings are due, and that he is entitled to the tenth of the value of the odd numbers, and to other tithes.

Upon reading the bill, and the proofs taken in the cause,

It

ECERTON
against
STILL.

The tithes of
Easter offerings,
and of the odd
numbers of
wool, calves,
lambs, pigs,
goslings, &c. ordered to be paid,

IT IS ORDERED BY THE COURT, that the defendant do come to an account with the plaintiff for his *Easter offerings* and the tithes of wool, calves, lambs, pigs, and goslings, *pro rata* for all odd numbers under ten, as well as above the number of ten, for the time in the bill demanded.

GILBERT, *Baron*,
PAGE, *Baron*.

MICH. TERM,
12. GEO. 1.

FOOT against HURST.

Bedfordshire, 11th November 1725.

The vicar of
Harlington, in
Bedfordshire,
claims tithes in
kind.

THE bill stated, that the plaintiff, about the month of *March* 1717, was lawfully instituted, &c. into the vicarage of *Harlington*, in the county of *Bedford*, and entitled to all the tithes of milk, calves, wool, lambs, pigs, poultry, eggs, apples, pears, gardens, other small tithes, and *Easter offerings*; that the defendants, for three years past, had held and occupied in the said parish several orchards, gardens, and yards, in which they had grown and gathered great quantities of apples, pears, and other fruits; that they had also several lands, on which they had kept cows, which had produced many calves, and given great quantities of milk; that they also had sows, which had littered pigs; sheep and ewes, which had lambs and wool; and poultry, which had laid eggs; the tithes of all which amounted yearly to a considerable sum from each defendant; but which they had refused to pay, either in value or in kind. The bill therefore prayed that the defendants might set forth the quantities, qualities, and values of their tithes, and pay the same, together with their *Easter offerings*.

The defendant
Hurst sets up a
modus of 12s. a-
year, in lieu of
the small tithes
of *Hurst's Farm*,
and 28s. a year
for his lands in
the *Common Fields*.

The defendant *Hurst* admitted, that the plaintiff was lawful vicar of the parish; but denied that he was entitled to any small tithes in kind; and, after setting forth what lands he farmed in the parish, said, that the vicar was only entitled to certain sums of money in lieu thereof; and that his predecessors had always accepted six shillings, payable by half-yearly payments at *Michaelmas* and *Lady Day*, in lieu of all small tithes and *Easter offerings* growing due for his farm; one pound, eight shillings, for all the small tithes of forty-eight acres and one rood of arable land in the common fields of *Harlington*, belonging to *A. Wingate*, thirty-nine acres and one rood whereof were in his, the defendant's, occupation, and for which he had always paid one pound six shillings, and the tenant two shillings, for the other nine acres; and that the said sums had always been accepted in lieu of tithes in kind, of which no demand had ever before been made; that, in pursuance of the said custom, he had yearly paid twelve shillings

shillings at *Michaelmas* and *Lady Day* to the plaintiff's predecessors, in lieu of all small tithes and offerings growing due for a certain farm formerly in the possession of *W. Avery*, two parts whereof the said defendant became tenant at of *Michaelmas* 1719; and that two shillings and sixpence was a just proportion thereof for the other part at *Michaelmas* 1720; that he, the defendant, had never refused to pay the accustomed payments, and had tendered the same to the plaintiff, which he had refused to accept; that notwithstanding the said customs, the defendant had offered to pay the plaintiff his tithes in kind; but that he demanded a rate of fivepence in the pound, and afterwards of sevenpence in the pound in satisfaction of tithes in kind; that in the year 1720, he, the defendant, carried the tenth meal of all the milk his cows had produced from the first of *May* to the plaintiff's house; and that he had taken of the said defendant in that year all his tithe wool in kind; and he set out an account of all his tithes on the said farm from *March* 1717, and the values, except the tithes of milk and wool; and stated, that the usual method of tithing cocks and hens in the said parish was three eggs for each cock, and two eggs for each hen, yearly; and that he had never heard that tithe eggs were paid; that the plaintiff had never demanded any *Easter* offerings; and that he believed none were due or ever paid to the former vicars; but, on the contrary, the aforesaid several customary payments had been paid to and accepted by the said plaintiff and his predecessors in lieu of small tithes; and therefore he did not pay or set out his small tithes, except the tithe milk and the tithe wool in the year 1720.

The defendant *Barkus* said that for all the time the plaintiff had been vicar of the parish he rented of and from the *Drapers Company*, in *London*, as trustees for the hospital of *Oakingham*, in *Berkshire*, one messuage, called the *Mill* or *Grange Mill House*, and a small piece of ground, and also a pasture, called *Hipwicks*, otherwise *Hempwicks*, containing about two acres; that these were all the lands he held in the said parish; that the said *Mill House* and lands were, and had been time out of mind, free from all manner of tithes whatsoever, as having been part or parcel of the possessions of the late dissolved monastery or abbey of *Wooburn*; that the said *Mill House* and lands came to the crown by virtue of the 31 *Hen. 8. c. 13.*; that the abbots thereof, before and at the time of dissolution, held the same free from all tithes whatsoever or composition for tithes; and that they came, so freed, to the crown, and had been held ever since tithe free by the owners or occupiers thereof; and that it is provided by 2. *Edw. 6. c. 13.* "that no person shall be sued or compelled to pay any manner of tithes for any manors, lands, tenements, or hereditaments, which by the laws of this realm, or by any privilege or prescription, are not chargeable with the same; and he prayed the benefit of the

Foot
against
Huart.

and insists, that he had paid his tithes of milk and wool in kind; and

that there are three eggs for every cock, and two eggs for every hen, payable in lieu of tithes.

The defendant *Barkus* says, that he occupies a farm called *Mill House Grange*, and two closes called *Hipwicks*; that the said farm and lands were formerly parcel of the abbey of *Wooburn*; and, by virtue of the statutes of 31 *Hen. 8. c. 13.* and 2. *Edw. 6. c. 13.* are tithe free.

Foot
against
HURST.

the said act. He admitted, that he was once prevailed upon to pay four shillings as a composition for the same; but insisted, that he had paid the same in his own wrong; and that no *Easter* offerings or other offerings were due to the plaintiff for the reasons aforesaid: and he set forth the titheable matters which he had on the said farm.

The defendant *Monk* says, that he occupies *Prior's Fields* and *East Mead*, which were also parcel of the said abbey, and so tithe free; that he also holds *Allford's Close*, the *Home Close*, and the *Orchards*, for which, together with a close called *Oatfield*, there is a composition of 20s. a-year.

The defendant *Monk* said, that he had of the said company a messuage and yard, and two closes, called *Prior's Fields* and *Eastmead*; and insisted on and set up the same exemption for them as the defendant *Barkus* had set up for his lands. He also alledged, that no tithes whatsoever in kind had ever been paid to the vicar for the farm and lands which he occupied, called *Allford's Croft*, the *Home Close*, and the *Orchard Close*, or any other lands in the said parish; but that a yearly composition of twenty shillings had been paid to the vicar half-yearly at *Lady Day* and *Michaelmas Day*, for all small tithes and dues for the same (and for another parcel of land called *Oatfield*, which he did not hold); and he tendered the said twenty shillings, which, he said, exceeded the value of his tithes in kind; and he set forth his titheable matters and tings (except milk); and averred, that he had paid to the plaintiff three shillings for *Easter* offerings; but said, that he believed they were not due, for that the said twenty shillings a year covered all his small tithes.

The evidence
read.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and on hearing what was insisted upon by counsel on both sides; and upon reading the minister's accounts of the rents of the said monastery or abbey of *Woolburn* for one year from *Michaelmas*, in the twenty-ninth year of *Henry the Eighth*; also letters patents, dated the first of *June*, in the thirty-first year of *Henry the Eighth*, and the twenty-first of *April*, in the sixth year of *Queen Elizabeth*; an indenture, dated the sixteenth of *July*, in the twelfth year of *James the First*; the like the fourth of *December* in the same year; the like the eighteenth of *October* 1663; and reading the proofs taken in the cause; and hearing what could be further alledged by counsel on both sides;

The Mill House
Grange, Hip-
wicks, *Prior's*
Fields, and *East*
Meads, declared
to be tithe free;

THE COURT was of opinion, that the messuage called the *Mill*, or *Grange Mill House*, and the lands called *Hipwicks*, otherwise *Hempwicks*, in the occupation of the defendant *Barkus*; and likewise the lands called *Prior's Fields* and *East Mead*, in the occupation of the defendant *Monk*, were exempted from the payment of tithes.

and the bill a-
gainst *Monk* and
Barkus dismiss-
ed as to the
said lands.

IT WAS THEREFORE ORDERED BY THE COURT, that the bill, as far as it seeks to be relieved against the defendants *Monk* and *Barkus* touching the payment of tithes for and in respect of the lands exempted therefrom by virtue of the aforesaid statutes,

tutes, be, and the same is hereby absolutely dismissed with costs as to the defendant *Barkus*, to be taxed by the deputy remembrancer.

Foot
against
HURST.

And upon the plaintiff's offering to accept twenty shillings a-year tendered by the defendant *Monk's* answer,

The plaintiff accepts the 20s. as to *Alford's Close*, &c.

IT IS FURTHER ORDERED, that the defendant *Monk* do pay to the plaintiff his costs of this suit to the time of putting in his answer to the bill; but that the plaintiff do pay to the defendant all his costs from the time of putting in his answer as aforesaid, and afterwards; to be taxed by the deputy, to whom it is hereby referred to tax the same.

Costs.

AND IT IS FURTHER ORDERED BY THE COURT, that the defendant *Hurst* do come to an account before the deputy for what is due to the plaintiff from him for and in respect of the tithes and *Easter* offerings in the bill mentioned; the costs reserved as to the account.

The defendant *Hurst* ordered to account for his tithes.

The deputy remembrancer, on the twenty-seventh day of *June* last, made his report; and upon reading the decree and report without exceptions;

IT IS ORDERED, that the report be confirmed; and that the said defendant do forthwith pay to the plaintiff two pounds, thirteen shillings, and threepence, for the tithes of apples and other garden stuff, and for tithes of calves, milk, pigs, lambs, wool, and eggs, together with his costs of this suit, to be taxed.

The report confirmed.

THO. PENGELLY.
B. HALE.
J. COMYNS.

HANSON against FIELDING.

Warwickshire, 21st February 1725.

HILARY TERM
12. GEO. 1.

THE bill stated, that *F. Hanson*, the father of the plaintiff, was, in his life-time, seised in fee of all the tithes of corn, grain, wool, lambs, and hay, within the parish, precincts, and boundaries of *Shilton* and *Barnacle*, in the county of *Warwick*; that on his death the same descended to *Francis Hanson*, his eldest son and heir; that *Francis Hanson*, by indenture of lease, dated the twentieth of *August* 1692, demised the same to *B. Fielding*, to hold one moiety thereof from the twenty-sixth of *March* 1701 for twenty-one years, and the other moiety for ten years; that on the death of the said *B. Fielding*, the defendant, his eldest son and heir, became possessed of the said lease, as executor and administrator to his father; that *Francis Hanson* the son died in the year 1697; that by his death the estate and inheritance of the said tithes descended and came to the plaintiff *Hanson*,

The lay impropriator of *Shilton* and *Barnacle*, in *Warwickshire*, claims the tithes of the manor of *Barnacle*.

S. C. Bunb. 214.
S. C. Eq. Rep. 225.

HANSON
against
FIELDING.

Hanson, as brother and heir; that the term of twenty-one years expired on the twenty-sixth of *March* 1722, and the term of ten years on the twenty-sixth of *March* 1723; that the plaintiff *Norton*, knowing that the said tithes were much underlet, offered the same to the defendant at forty-six pounds a-year, which he refused to accept; that thereupon he let the same to the plaintiff *Brown* to hold for twenty-one years, and executed a lease to him, dated the tenth of *May* 1723; that the defendant, since the expiration of the said leases, had cut and carried away corn and hay growing on his lands in the manor of *Barnacle*, in the parish of *Skilton*, and had fed and depastured sheep thereon; and that he refused to pay any tithes of corn, grain, hay, wool, and lambs, to the said plaintiffs, and not only kept the said tithes to his own use, but refused to give the plaintiff any account thereof. The bill therefore prayed an account, and satisfaction for the same.

The defendant
answers;

and an order nisi
made, that the
tithes of the ma-
nor should be
paid.

The defendant appeared and answered (a); the plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon opening the bill, and reading an affidavit of service of *subpœna* to hear judgment; and no counsel appearing for the defendant; and reading his answer; THE COURT ordered the defendant to account for the value of the tithes of corn, grain, wool, and lambs, which he had in *Barnacle*, and the titheable places, as demanded by the bill; and that the deputy remembrancer do take the account, unless cause be shewn to the contrary; the said defendant first paying five pounds costs before he be heard.

The defendant
appears, and the
evidence is read.

On the twelfth of *May* 1725, upon hearing counsel for the defendant; and upon reading a copy of an inrollment of a grant of the fifteenth of *December*, in the fourth year of *Edward the Sixth*, to *Sir R. Sadler* and *L. Wynton*; another grant of the twenty-first of *May*, in the fifth year of *James the First*, to *H. Nicholls* and another; an indenture of the twenty-third of *May*, in the fifth year of *James the First*, between the said *Nicholls* and *Fielding*; another indenture of the fifteenth of *September* 1653, between *B. Fielding* and *J. Major* and others; several court rolls relating to the manor of *Barnacle*; the register book of the prior and convent of the city of *Coventry*, now remaining in the custody of the first secondary of this court; a survey or terrier of *Sowe*, dated

(a) It is said, that the defendant, as to the manor of *Barnacle*, insisted by his answer, that the manor was part of the possessions of the priors of *Saint John of Jerusalem*; that the said possessions were exempted from the payment of tithes *quoadvis propriis manibus*, &c. and then set forth the statute 31. Hen. 8. c. 13. with the clause of discharge, and also the statute 32. Hen. 8. c. 20. whereby

the priories, with all privileges, &c. were vested in the crown; that no tithes in kind had been paid for this manor; and that, upon debate of this exemption, THE COURT seemed all of opinion, that it was a good discharge; but that the plaintiff afterwards failed in making out his title; and upon that the bill was dismissed. S. C. Bunb. 212.

the

the sixth of *September*, in the seventh year of *Queen Elizabeth*; several deeds relating to the defendant's estate at *Burnacle*; certain letters patent, dated the twenty-sixth of *May*, in the thirty-fifth year of *Queen Elizabeth*, containing an exemplification of certain interrogatories and depositions of witnesses in a cause depending in the court of chancery, *Aylionby v. Butler*; the roll or survey of ecclesiastical benefices, taken or made in the twenty-sixth year of *Henry the Eighth*, and now remaining in the first fruits office, and exhibited in bar to the plaintiffs title to the tithes of wool and lambs claimed by the plaintiffs in their bill; a lease from *D. Slater*, clerk, vicar of *Ansty* and chaplain of *Shilton*, to the defendant, dated the first of *May* 1725, whereby the said vicar demised to the defendant all his tithes and dues within the chapelry, boundary, and precincts of *Shilton*, as in the said lease is mentioned; an indenture, dated the third of *January*, in the twelfth year of *Charles the Second*, from *R. Taylor*, of *Ansty*, to *R. Normanton*, whereby he demised to him the tithes of corn and grain for two thousand years and a pepper-corn yearly rent; an inrollment of a grant made the twenty-third of *July*, in the second year of *Philip and Mary*, to *T. Reeve* and *G. Ifham*; an original grant made to *T. Grevis* under THE GREAT SEAL OF ENGLAND, dated the twelfth of *April*, in the seventeenth year of *James the First*; all the depositions taken on both sides; and upon long debate of the matter;

HANSON
against
FIELDING.

IT IS ORDERED BY THE COURT, that the bill be dismissed, with costs to be taxed for the defendant by the deputy remembrancer of this court.

The bill is dismissed with costs.

JEFF. GILBERT.
RO. PRICE.
F. PAGE.
B. HALE.

BATE against HOWLAND; et è Contra.

Kent, 6th July 1726.

TRIN. TERM,
12. GEO. 1.

THE rector of *Wareborne*, in the county of *Kent*, by his bill stated, that he was lawfully entitled to all predial, mixed, and personal tithes, both great and small, arising in the said parish, or to some recompence for the same; that the defendant *Hodges* from the first of *May* 1721, and the other defendants from *Michaelmas* 1719, had occupied, in the said parish, several quantities of marsh and other lands, together with several gardens and orchards of great yearly value; that they had made hay, and had kept, fed, and depastured milch cows, dry cattle, sheep, mares, and sows thereon, and from which they had calves, lambs, colts, pigs, milk, and wool; that they also had all sorts of

The rector of *Wareborne*, in *Kent*, claims tithes in kind, excepting corn, wood, and hops, from all kinds of land, whether Upland or Marsh Land, and also all tithes arising on part of his glebe land then in the occupation of one of the defendants.

BATE
against
HOWLAND;
et 2 Contra.

roots, fruits, hemp, flax, nursery trees, poultry, bees, wax, honey, eggs, and divers other titheable matters (corn, wood, and hops only excepted), and had taken the same away, without setting forth the tithes thereof, or making him any recompence for the same; that the defendant *Brown* had, for two years last past, rented of him part of his *glebe lands*, and had cultivated thereon, over and above the titheable matters above-mentioned, all sorts of corn and hops, the tithes of which were due to him, as well as *Easter offerings*, but which the said *Brown* had refused to pay. The bill therefore prayed a full discovery, an account of, and a satisfaction for all the said tithes.

The defendants say, that all the lands in the parish are distinguished either as *Upland* or as *Marsh Land*; and that there is a *modus* of one shilling an acre for the *Upland*, and fourpence an acre for the *Marsh Land*, payable to the rector on every *Michaelmas Day*, excepting when the said lands are sowed with corn, grain, hemp, flax, or planted with hops, in lieu of all tithes of hay pasturage and small tithes arising thereon, excepting the tithes of hemp, flax, and hops.

The defendants admitted, that the plaintiff was rector of the parish, and entitled to receive all manner of tithes therein, or some satisfaction in lieu thereof; and that they had converted to their own use the several titheable matters and things growing and being upon the several lands they held and occupied; the quantities, qualities, and values of which they set forth; for that their lands of every kind, gardens, nurseries, orchards, and all other lands whatsoever in the said parish, had been immemorially called and distinguished by no other names than *Upland* and *Marsh Land*; that all and every occupier of *Marsh Land* had immemorially, on *Michaelmas Day* in every day, paid to the rector of the parish, or his lessee, one shilling an acre, and no more, for every acre of *Marsh Land* in their possessions in the said parish, except when the same had been sown or planted with corn and grain, hemp, flax, or hops, as a *modus* in lieu of the tithes of hay, pasture, and all the small tithes, excepting the tithes of hemp, flax, and hops, yearly arising upon the said *Marsh Land*; and so after that rate for a greater or less quantity than an acre of such *Marsh Land*; and that the said sum of one shilling had been constantly and immemorially accepted by the rectors of the said rectory for the time being, or by their lessees, as a *modus*, and in lieu of the tithe hay and pasture and all such tithes as aforesaid: and they insisted, in the like manner, of fourpence an acre for *Upland*, with the same exception, in lieu of the tithes of hay, pasture, and all small tithes as aforesaid; and they averred, that no tithes in kind, either for hay, or for any small tithe (except for flax, hemp, and hops) had ever been demanded by any former rector or lessee; and that no pretence had ever before been made to any other recompence for tithes than according to the *moduses* before stated: and they set forth the several sums due from them to the plaintiff in lieu of tithes, according to the *moduses*, which they said they had always been ready to pay, and which they offered by their answer to pay to the plaintiff, together with the costs.

The plaintiff replied, and the defendants rejoined.

The landholders file a cross bill to establish the said *moduses*.

The owners and occupiers of lands in the said parish, as well on behalf of themselves as on behalf of the several other owners and

and occupiers of land in the said parish, also filed their *cross bill* against the plaintiff *Bate*, praying, that the *modus* set forth in the answer to the original bill might be established.

BATE
against
HOWLAND;
et c. *Contra*.

The rector put in his answer to the effect of the original bill.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon opening the original bill, and reading an order made on the twenty-seventh of *April* last, whereby all parties were to appear *gratis* at the hearing of both causes; and upon reading the answer of the defendants in the original cause, no counsel attending for them to open either the answer or the cross-bill;

The evidence
read;

THE COURT ordered the defendants to the original bill to account with the plaintiff for their tithes in kind for the time demanded by the bill, except such as the rector had waived by his replication; that the deputy remembrancer should take the account; and that the *cross bill* should be dismissed, unless cause were shewn to the contrary; the defendants first paying five pounds costs for this day's attendance before they were heard.

and the defend-
ants decreed to
account *nisi*.

The defendants paid the five pounds costs; and on the eighth of *December* 1726, the cause came again before the court; when, upon opening the pleadings, THE COURT directed a trial at law upon the two following issues, viz.

The cause re-
heard; and is-
sues directed to
try,

FIRST, "Whether all and every occupiers of *Marsh Land* within the parish of *Wareborne* have, time out of mind, paid, or ought to pay, every *Michaelmas Day*, to the rectors of the said parish, or their lessee or lessees, for the time being, one shilling an acre, and no more, for every acre of *Marsh Land* in their respective possessions within the said parish (except when the same hath been sown with corn or grain, or with hemp or flax, or planted with hops), as a *modus*, and in lieu of the tithe of hay and pasture, and all small tithes (except the tithes of hemp, flax, and hops), yearly arising upon the *Marsh Land* in their respective possessions within the said parish and the titheable places thereof; and so after that rate for a greater or less quantity than an acre of such *Marsh Land* in their respective possessions."

1st, The *modus*
of 1s. an acre for
every acre of
Marsh Land.

SECONDLY, "Whether the occupiers of *Upland* within the said parish and the titheable places thereof have, time out of mind, paid, or ought to pay, yearly, every *Michaelmas Day*, to the rector or rectors of the said parish, or their lessee or lessee for the time being, fourpence an acre, and no more, for every acre of *Upland* in their respective possessions within the said parish and titheable places thereof (except when the same is sown with corn or grain, or hemp or flax, or planted with hops); and so after that rate for a greater or less

2d, The *modus* of
4d. an acre for
every acre of
Upland.

BATE
against
Howland;
et à Contra.

The jury find
both the *modus*
in favour of the
landholders.

"quantity than an acre of such *Upland* in their respective pos-
"sessions within the said parish or titheable places thereof, as a
"modus, and in lieu of the tithe hay and pasture, and all small
"tithes (except the tithes of hemp, flax, and hops), yearly arising
"upon the *Uplands* in their respective possessions within the said
"parish and titheable places thereof."

A trial was accordingly had; and thereupon the jury found
their verdict as to THE FIRST ISSUE, "that all and every the
"occupiers of *Marsh Land* within the parish of *Wareborne*, from
"the time whereof the memory of man is not to the contrary,
"had paid, or ought to have paid, to the rectors of the parish
"aforesaid, or their lessee or lessees thereof for the time being,
"one shilling, and no more, for every acre of *Marsh Land* in
"their respective tenures within the said parish (except when
"the same was sown with corn or grain, or with hemp, flax, or
"hops), as a *modus*, and in lieu of tithe hay and pasture, and all
"small tithes (except tithes of hemp, flax, and hops), yearly
"arising upon the *Marsh Land* in their respective tenures
"within the said parish and titheable places of the same; and
"so after that rate for a greater or less quantity than an acre
"of such marsh land as the said defendants had alledged by the
"plea."—And as to THE SECOND ISSUE, the jury by their verdict
found, "That the occupiers of *Upland* within the said parish and
"titheable places thereof, from the time whereof the memory
"of man is not to the contrary, had paid, or ought to have
"paid, yearly, on the aforesaid *Feast of Saint Michael the*
"*Archangel*, unto the rector or rectors, or their lessee or lessees
"for the time being, fourpence, and no more, for every acre of
"*Upland* in their respective tenures within the said parish and
"titheable places of the same (except when the same was sown
"with corn or grain, or with hemp or flax, or planted with
"hops); and so after that rate for a greater or less quantity
"than an acre of such *Upland* in their respective tenures within
"the said parish and titheable places of the same, as a *modus*,
"and in lieu of tithes of hay and pasture, and of all small tithes
"(except the tithes of hemp, flax, and hops), yearly arising
"upon the *Uplands* in their respective tenures within the said
"parish and titheable places of the same, as the defendants had
"alledged by their plea."

The *possea* read;

On the sixth of *December* 1728, these causes came on for
further directions; and upon hearing counsel for all parties;
and reading the decree and *possea*; and on full debate of the
matter;

and both the o-
riginal bill and
the cross bill are
dismissed with
costs,

THE COURT ordered, that the *original bill* be dismissed, with
costs both at law and in equity; and that the *cross bill* be dis-
missed, with costs in equity.

PEIRCE *against* WARRENER.TRIN. TERM,
12. GEO. 1.*Wiltshire, 6th July 1726.*

THE bill stated, that the plaintiff had been, for four years past, duly instituted and inducted in the vicarage and parish church of *Chirton*, in the county of *Wilt*; that thereby, and by virtue of some ancient endowment, usage, custom, prescription, or otherwise, he was justly entitled to all tithes of grass and hay within the said parish, save only the tithes of three meadows within the manor and tithing of *Connock*, in the said parish, the tithes whereof, the plaintiff admitted, were, by some ancient prescription or otherwise, due to the owners of the impropriate tithes of the manor of *Chirton*, in the said parish; that the defendant, from *Lady Day* 1720, had occupied land in the said manor of *Connock*, amongst which were two of the three meadows afore said, of which the tithes do not belong to the vicar; but that the tithe hay and grass of all the rest did belong to him; that the said defendant had cut down clover and other grass growing on the said lands, and made it into hay, and converted it to his own use, without setting out the tithes thereof, on a pretence that the said tithes belonged to him as possessor of the impropriate tithes of *Connock*; but that, in truth, they belonged to the impropriator of *Chirton*. The bill therefore prayed, that the defendant might answer the premises, and true discovery make of the several matters charged in the bill.

The defendant admitted, that the plaintiff might be instituted and inducted into the vicarage, and entitled to receive some small tithes, *Easter* offerings, and oblations, incident thereto; but denied that he, or any of his predecessors as vicars there, had ever any legal right to the tithes of all or any sorts of grass and hay annually arising within the said tithing of *Connock*, in the said parish; for that the manor of *Chirton*, the demesne lands, all houses, lands, commons, royalties, the advowson of the church, the glebe lands thereof, all tithes of what nature or kind soever, and all the rights, members, and appurtenances, to the said church belonging, were, about the reign of *Henry the Fourth*, given to the prior and convent of *Saint John the Baptist*, commonly called *Louthmay*, first founded in *Wales*, and afterwards removed in or near to *Gloucester*, and dedicated to the *Virgin Mary*; that the said manor, at the time of its donation to the said prior and convent, consisted, and still consists, of two tithings, namely, the tithing of *Cherington*, otherwise *Chirton*, and the tithing of *Connock*, otherwise *Conck*; that the said tithings, houses, lands, glebe lands, tithings, hereditaments, and appurtenances, to each of them belonging, were granted by the said prior and convent distinctly, in separate leases, under distinct rents, and had ever since continued distinct; that on the dissolving of *Connock*, and all the tithes thereof, and that it came by mesne conveyances, under whom he claimed,

The vicar of *Chirton*, in *Wiltshire*, claims the tithes of hay arising within the tithing of *Connock*, in the parish of *Chirton*, excepting only of the three meadows in *Connock*, called the *Rumings*, the *Freebold Mead*, and *Beasley's Meadow*, the tithes of which belong to the impropriator of *Chirton*.

The defendant denies that the vicar of *Chirton* is entitled to the tithe of hay in the tithing of *Connock*, and claims the same as impropriator of the tithes of *Connock*; stating, that the manor of *Chirton* consists of the two distinct tithings of *Chirton* and *Connock*; that the said manor belonged to the priory of *St. John*, and came, on the dissolution of the priory, into the hands of the crown; and that *Queen Elizabeth* granted the tithing to his ancestor,

PEIRCE
against
WARRENIE.

lution of the said priory, the said manor, tithes, and premises, with the other possessions of the said priory, were given and granted to *King Henry the Eighth*, in whose reign a true account and particular thereof was returned into the augmentation court; that *King Henry the Eighth* was seised of the said manor and premises, after the determination of the particular estates then existing, from grants made by the said prior and convent; that the same descended to *Queen Elizabeth*; that *Queen Elizabeth*, by letters patents of the fifth year of her reign, demised the said messuages, lands, tenements, glebe lands, and tithes both great and small, of what nature or kind soever, in the said tithing of *Connock*, in the said parish of *Chirton*, for a term of years, to *E. Barnard* and his assigns; and afterwards, in the fourteenth year of her reign, to *Lady Stafford*; and afterwards, in the thirty-third year of her reign, to *Richard Pavie*, for a term of years; that the reversion and inheritance thereof descended to *James the First*; that *James the First*, by letters patent, in the sixth year of his reign, granted the same to *R. Moore* and *F. Phelps*, their heirs and assigns for ever, which said grant is recited *verbatim* in his answer; that all the premises so demised were, by the said *R. Moore* and *F. Phelps*, granted and conveyed to the defendant's ancestors, under whom he claimed; and he insisted on his right and title thereto, and to receive and take the same as his ancestors had always done. He denied that the plaintiff, or any of his predecessors as vicars of *Chirton*, had always received the tithes of all sorts of grass and hay, and particularly of clover grass, from the time of its being first sown in the said parish, within the said tithing of *Connock* (the three meadows in the bill only excepted), for that it was first sown there only fifty years ago; and he insisted, that he was entitled thereto as impropiator of the tithes of *Connock*, and to all great and small tithes, together with the glebe lands lying in the said tithing belonging to the said parish of *Chirton*. He admitted, that the impropiator of the tithing of *Chirton* received the tithes of the said three meadows; but he denied that the plaintiff had any right or title to the tithe of any kind of hay or grass, either of the defendant's glebe lands, or of any other of his lands or possessions within the tithing of *Connock*; and he set forth the land which he held, and the quantities and values of his tithes.

But he admits that the impropiator of *Chirton* is entitled to the tithes of the three meadows.

The evidence read;

and the defendant ordered to account *nisi*.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined on both sides; and upon opening the bill, and no counsel attending for the defendant; and on reading an affidavit of service of *subpœna* to hear judgment; THE COURT ordered the defendant to account for the tithes which he had in the parish of *Chirton* during the time demanded by the bill, unless cause were shewn to the contrary, the defendant first paying five pounds costs before he be heard.

The

The defendant paid the costs, and the cause came on again before the Court on the fourteenth of November 1726; when, upon hearing counsel, and reading several proofs taken in the cause,

PIERCE
against
WARRENER.

The cause re-heard, and an issue directed to try

THE COURT directed a *trial at law* upon this issue, "Whether the plaintiff is entitled to the tithe of hay arising upon any and what lands lying within the tithing of *Connock*, in the parish of *Chirton*, in the county of *Wilts* (except the three meadows commonly called or known by the several names of the *Rumings*, the *Freehold Meadow*, and *Beuvel's Mead*), in the said bill mentioned:" The plaintiff in equity to be plaintiff at law.

Whether the plaintiff is entitled to the tithe hay of *Connock*, excepting the three meadows.

A trial at law was accordingly had; and a verdict, upon full evidence, given for the plaintiff.

A verdict found for the plaintiff.

On the eighth of May 1727, upon reading the decree and *posse*,

THE COURT ordered the defendant to account for the tithes demanded by the bill, with taxed costs both at law and in equity.

The tithes decreed.

The deputy, to whom the taking of the account was referred, made his report accordingly on the fourteenth of July last; and upon reading the report, and the decree;

The deputy makes his report.

THE COURT ordered, that the said report be confirmed; and that the defendant do forthwith pay to the plaintiff two pounds, eight shillings, reported due for his tithes, together with his subsequent costs, to be taxed by the said deputy.

The report is confirmed.

SOMERVILLE, D. D. against WISE.

TRIN. TERM,
12. GEO. 1.

Oxfordshire, 5th July 1726.

THE bill stated, that the plaintiff, for two years past, had been vicar of *Adderbury*, in the county of *Oxford*, with the chapelries of *Bodicott* and *Bedford* thereto belonging; and that, by endowment or usage, he was entitled to the tithes of hay, milk, calves, and all offerings and small tithes, except the tithes arising from and out of the rectory and demesnes of the parish church of *Adderbury* aforesaid; and except the tithe hay arising out of certain demesne lands belonging to the bishop of *Winchester* there; that the defendants, for the years 1722 and 1723, were inhabitants therein, and had occupied several parcels of ground, which are no part of the said rectory or demesne lands, called the *Ten Pound Plott*, *Pease Porridge Meadow*, the *Moors*, and the *Mill Meadow*, and had yearly mowed great quantities of *Ten Pound Plott*, *Pease Porridge Meadow*, the *Mill Meadow*, the *Moors*, *Ward's Meadow*, the *Last Meadows*, *Sweetmay Mead*, and *Hadgay Mead*;

The vicar of *Adderbury*, with the chapelries of *Bodicott* and *Bedford*, in *Oxfordshire*, claims the small tithes of the parish, excepting from the rectorial demesnes, and the tithe hay on the copyholds belonging to the Bishop of *Winchester*; particularly of

S 4

hay

SOMERVILLE
against
WIFE.

and stated, that the defendants had only paid the tithe of milk from the tenth of May to the tenth of August, in lieu of the tithe milk of the whole year.

hay therefrom, and carried the same away, without setting out the tithes thereof, or making any satisfaction for the same, though they had regularly paid him the tithe for the same for several years before the said two years; that during the said two years they had kept several milch cows, the tithes of which, though the defendants admit the same to belong to the plaintiff, they had only paid from the *tenth of May* to the *tenth of August* yearly, insisting, that no tithe milk ought to be paid for the remaining part of the year; that the tithe of the milk so taken was spoiled, and not regularly set out, the defendant's pretending, that there is a *modus* due for the same; but that, on the contrary, the payments they have made were only compositions for the said tithes. The bill therefore prayed an account, and a satisfaction for the said tithes.

The defendants admit the plaintiff is vicar.

The defendants admitted that the plaintiff was vicar of *Adderbury*, and entitled to the tithes of hay, milk, calves, and other small tithes, except as in the bill and answer are mentioned, or to some *modus* in lieu thereof.

The occupier of *Ten Pound Close* insists on a *modus* of 1s. a year, in lieu of tithe hay.

The defendant *Wife, sen.* admitted, that in the year 1723 he had occupied and mowed the meadow called *the Ten Pound Plot*, lying in a meadow called *the Misse*, containing about four or five acres, and about four men's math; and he set forth what hay he had made thereon; but insisted that *the Ten Pound Plot* had been immemorially part of two yard lands formerly belonging to one *Baylis*, for the tithes of which a *modus* of one shilling a-year was due; that as the same had been constantly paid and received, he ought to be discharged thereupon from all tithe hay.

The owners of *Pease Porridge Meadow*, *Mill Meadow*, *Ward's Meadow*, and *the Moors*, say, they are part of the exempted copyholds;

and insist on a *modus* of 2d. a mower, in lieu of the tithe hay of the *Lott Meadows*;

The other defendants set forth the respective shares and interest they had had in the meadows called *Pease Porridge Meadow*, *Mill Meadow*, *Ward's Meadow*, and *the Moors*, as they severally occupied them in the said years, and the quantities and values of the hay they had made thereon; but they insisted, that the said meadows were part of *the Demesne Lands* excepted from the payment of tithes by the bill. They also set forth their proportions in *the Lott Meadows*, which, they insisted, had never, within the memory of man, paid any tithes in kind to the vicar; but that sixty years ago and before, time out of mind, the occupiers thereof used to pay to the vicar, at *Michaelmas* yearly, a *modus* of twopence a mower, and so in proportion for any other quantity of meadow, in lieu of all tithes thereof; that about sixty years ago the occupiers compounded with *Dr. Bean*, the then vicar, for all vicarial tithes, at the rate of eight shillings a yard land, including the *modus* of twopence a mower; which rate was accepted for all tithes by the vicars until the present plaintiff became vicar of the said church; and they insisted, that only the said *modus* of twopence a mower or man's math was due

for

for the tithe hay of *the Lott Meadows*, which, they said, they had been always willing to pay.

SOMERVILLE
against
WIFE.

The defendants also admitted, that they had kept large quantities of milch cows in the said parish; but said, that the vicars thereof had immemorially taken every tenth meal, or morning and night's milk, from all milch cows in the said parish, from their first going upon *the Common*, which happens usually on the third of *May*, for ten tithe meals or turns of mornings and night's milk, in lieu of all tithe milk; and that the plaintiff had actually received the same from them ever since he had been vicar; but they denied that they had obstructed him in taking his tithe milk, or that they had spoiled the same; and they set forth the quantities and values of the several titheable matters and things which they respectively had on their said grounds.

and that they are, by custom, only to pay every tenth meal's milk, from the time the cows first go on *the Common*.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on both sides; and upon reading all the depositions taken on both sides, and the several exhibits following, viz. an inquisition taken on *Thursday* next after the feast of *Saint Ambrose*, in the fifteenth year of *Edward the Third*; a roll of assessment for the county of *Oxford*, dated the second of *March*, in the fifteenth year of *Edward the Third*; letters patents of *King Richard the Second*, dated the thirtieth of *April*, in the fourth year of his reign; a charter of *W. Wickham*, bishop of *Winchester*, dated the tenth of *May* 1381, in the fourth year of *Richard the Second*; a charter of the priory and convent of the cathedral church of *Winchester*, dated the twenty-fourth of *May* 1381, in the fourth year of *Richard the Second*; letters patents of *Thomas Bishop of Rochester*, delegate of *Pope Urban*, dated the twenty-sixth of *June* 1381, in the fourth year of *Richard the Second*; the like of the said bishop, dated the ninth of *July* 1381; an indenture between the warden and scholars of the college, called *Saint Mary Winchester College*, in *Oxford*, and the vicar of *Atterbury*, dated the eighth of *October* 1397; the confirmation of the *Bishop of Lincoln*, subjoined to the said indenture; the terrier of the rectory of *Adderbury*, taken the thirty-first of *March* 1659; a copy of a bill and answers in this court, in the ninth year of *George the First*, *Somerville v. Wife*; also court rolls of the manor of *Adderbury*, beginning the nineteenth of *October* 1678, and ending the twenty-sixth of *October* 1715; a survey of the *Bishop of Winchester's* demesnes in *Adderbury* in 1647; and a letter from *Lady Rochester*; and upon long debate of the matter;

The evidence read.

THE COURT was of opinion, that the custom of paying ten meals, or morning and night's milk, in lieu of the tithes of milk, as set forth in the answer, is not good in law; and therefore doth overrule and set aside the same, and declare, that the defendants ought to account with the plaintiff for the tithes of their milk for the whole year.

The custom as to the tithe of milk declared to be void.

THE

SOMERVILLE
against
Wise.

The *modus* as to
the *Ten Pound Plot*
declared void.

THE COURT, as to the tithe hay of the *Ten Pound Plot*, occupied by the defendant *Richard Wise, sen.* he insisting that the same was part of two yard lands formerly belonging to one *Baylis*; and that a *modus* of one shilling a-year was due to the vicar, in lieu of the tithes thereof in kind; overruled and set aside the said pretended exemption, and ordered the defendant *Richard Wise, sen.* to account for the tithe hay thereof, as claimed by the bill.

The *modus* as to
the *Lott Meadows*
declared void.

THE COURT, as to the tithe hay of the *Lott Meadows*, was of opinion, that the pretended *modus* of twopence a mower, in lieu of tithe hay of such meadows, is not good in law, and therefore overruled the same, and decreed the defendants to account for the tithes of the same.

A trial ordered
as to the pre-
tended copy-
holds.

THE COURT, as to the tithe hay of the meadows called *Pease Porridge Meadow, the Moors, the Mill Meadow, and Ward's Meadow*, which are alledged to be part of the *Demesne Lands* excepted in the bill; and that therefore no tithes of hay are due to the plaintiff for the same, was of opinion, that the plaintiff's right to the tithes thereof should be tried at law.

The tithe of
milk decreed.

IT WAS THEREUPON ORDERED AND DECREED BY THE COURT, that the defendants do severally account with and satisfy the plaintiff for the tithes of the milk had by them respectively within the said parish during the whole of the years demanded by the bill, deducting thereout what tithe milk the plaintiff had received.

The tithe hay of
the *Ten Pound Plot*
decreed.

IT IS LIKEWISE ORDERED BY THE COURT, that the defendant *Richard Wise, sen.* do account with and satisfy the plaintiff for the value of the tithe hay of the meadow, called the *Ten Pound Plot*, during the time demanded by the bill.

The tithe hay of
Lott Meadows, Sweetnay, and Hadgay Mead,
decreed.

IT IS ALSO ORDERED, that the defendants do severally account with and satisfy the plaintiff for the tithe hay of their shares of the *Lott Meadows*, and also of *Sweetnay and Hadgay Meadows*, in the said parish, occupied by them severally during the years in the bill mentioned.

An issue to try,
whether *Pease Porridge Meadow, Mill Meadow, Ward's Meadow, and the Moors*, are copyholds be-
longing to the

And as to the tithes of hay of the meadows called *Pease Porridge Meadow, the Moors, the Mill Meadow, and Ward's Meadow*, a trial at law was ordered concerning the same; the plaintiff in equity to be plaintiff at law; and the issue to be, "Whether the said meadows, or any and what part thereof, are copyhold

"lands held under the *Bishop of Winton*, or not?"

But the defend-
ants confess they
are not;

By an order of Court made the sixth of *December* last, it was ordered, by the consent of five of the defendants (who were all the defendants that had any lands within the said meadows, they being sensible that the said four meadows were not such copy-

hold lands, and therefore desirous of avoiding the expence of such trial), that the issue directed as aforesaid should be taken *pro confesso* as against them ; and that they should account with, satisfy, and pay to the plaintiff for the values of the tithes arising on such parts of the said four meadows as were in their respective occupations during the time demanded by the bill ; the deputy remembrancer to take the account.

SOMERVILLE
against
Wise.

and therefore the
tithes are de-
creed ;

The deputy made his report, dated the twenty-eighth of January last ; and upon reading the said orders and report, and no counsel attending for the defendants, and no exceptions having been filed thereto ; the Court ordered the report to be ratified and confirmed, and the defendants to pay to the plaintiff the several sums reported due for their tithes, together with his costs to be taxed.

and the remem-
brancer's report
thereon is con-
firmed.

THE COURT FULL.

VAUGHAN *against* GODWIN.

Somersetshire, 5th July 1726.

TRIN. TERM,
12. GEO. I.

THE vicar of *Pawlett*, in the county of *Somerset*, claimed the small tithes thereof, or some *modus* or customary payments in lieu thereof.

The vicar of
Pawlett, in *So-*
merfetshire, is not
entitled to the
tithes of cer-
tain lands lying
in *Gauntsham*, in
the said parish.

The defendant *Godwin* said, that the ground he occupied was free and exempted from the payment of tithes to any vicar of the said parish ; for that *James the First* was seised in fee of all tithes, as well great as small, in *Gauntsham*, in the parish of *Pawlett* ; and by letters patents, dated the twenty-fifth of September, in the seventh year of his reign, granted and conveyed to *F. Morrice* and *F. Phelps*, and their heirs, all the said tithes lately belonging to the dissolved monastery of *Saint Augustine*, near *Bristol*, paying to the king three pounds a-year for the same ; that the said tithes were by them sold by indenture of the eighth of May, in the eighth year of *James the First*, to *Sir John Cowper* and his heirs, from whom the same descended to the *Earl of Shaftesbury* and his heirs ; that *Anthony Earl of Shaftesbury*, ancestor to the present earl, to whom he is heir, purchased and obtained a grant from *Charles the Second* of the said rent of three pounds after the death of the late queen dowager ; that the said *Sir J. Cowper* was also seised in fee of one hundred and fifty acres so possessed by the defendant lying in *Gauntsham*, in the said parish of *Pawlett* ; that he, the defendant, was possessed of, and entitled to, one hundred acres, part of the said one hundred and fifty acres, for the residue of a term of ninety-nine years, if three persons, in the lease named, lived so long, granted by *Anthony Earl of Shaftesbury* to the defendant's father, who gave the same to the defendant by will ; that sixteen shillings and eightpence had been annually paid

VAUGHAN
against
GODWIN.

paid by the occupiers of the said one hundred acres, in part of the three pounds reserved in the grant from *King James the First*, and paid to his successors, and last to the late queen dowager during her life, and since her death to the present *Earl of Shafesbury*, for the rent of the tithes of the said one hundred acres; that he was tenant of fifty acres, residue of the said one hundred and fifty acres, by title derived from *Sir J. Couper* or his heirs, or some other claiming under him by virtue of some lease or grant under which *Am. Lilly* now claims, and holds the same, to whom he, the defendant, is tenant; and he insisted, that no tithes or *modus* for any tithe hay within the memory of man had been paid, allowed, or accrued due to the plaintiff, or to any former vicar of the said parish, from any part of the said one hundred and fifty acres, or for any matters and things which had arisen thereon; and that the defendant was not by law bound to pay tithes.

The other defendants put in their answers, and said to the same effect as to the exemption of their lands.

The defendant *Radford* said, that he occupied also the *Winter Lease* in *Gauntsbam*, and which he said was tithe free; and he insisted, that there were certain *moduses* in other parts of the said parish, *viz.* fourpence a cow, in lieu of tithe milk or cow white; twopence for every calf under seven fallen within the same year; and if seven, then a tithe calf; and twelpence a pound according to the value of all pasture ground fed with unprofitable cattle; and he averred, that he had satisfied the plaintiff for all tithes, except for the land in *Gauntsbam*, for which, he insisted, no tithes were due.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading several proofs taken in the cause; an entry in the chapter-book of *Wells* of an endowment of the parish of *Pawlett*; the several ministers accounts touching the said parish and tract of land therein, called *Gauntsbam*; the letters patents in the seventh year of *James the First*; a deed dated the eighth of *May*, in the eighth year of *James the First*; and upon full debate of the matter;

IT IS ORDERED BY THE COURT, that the bill be dismissed with costs.

TRIN. TERM,
12. GEO. I.

GOUGE against CLARKE.

Yorkshire, 7th July 1726.

The lands called *Menthill Close*, *Whiteland Heads*, *Freshbolme*, and *Holding Close*, in the parish of *Gilling*, in *Yorkshire*, are tithe free.

The

The defendant said, the demesnes of the lordship of *Gilling* belonged to *Charles Fairfax*, lord thereof, and had ever been enjoyed free from the payment of tithes in kind; for that the plaintiff, and every rector of the said parish, had, time out of mind, received yearly, in lieu of tithes in kind arising on the said *Demesne Lands*, all the hay yearly growing upon three acres of meadow and a close, and a close in *Gilling*, called *Low Ings*; and he insisted on the benefit of the said prescription in bar of the tithes in kind arising upon the said *Demesne Lands*; for that all the closes which he occupied as tenant under the said *Mr. Fairfax*, viz. *Meathill Close*, *Whiteland Heads*, *Freshholme*, *Holding Close Paddock*, and *Green Close*, are all (except *Green Close*) part of the said *Demesne Lands*. He further said, that in the said years he had occupied other closes, viz. *Socker Flatt*, *Trisdale End*, *Millburne East Field*, *Fatt Close*, *Tho. Milburne's Pasture*, *the Top of Mill Spring*, *the Mill Hill*, *Knagg's Close*, and the *Old Park*, and about a rood of meadow, all which were exempted from payment of tithes.

GOUGE
against
CLARKE.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined in the cause; and upon reading several proofs taken in the cause, and on full debate;

IT IS ORDERED BY THE COURT, that the bill, as to such part thereof as seeks from the defendant an account of tithes for the lands within the parish of *Gilling*, insisted on by the answer to be parcel of the *Demesne Lands* of the lordship of *Gilling*, and tithe free, shall be dismissed, with costs to be taxed; but as to all other titheable matters and things demanded by the said bill which the said defendant had on his lands within the said parish of *Gilling*, the defendant is to account for with the plaintiff.

PRICE, *Baron.*
PAGE, *Baron.*
HALE, *Baron.*

THOMPSON *against* HOLT.

Buckinghamshire, 23d June 1726.

TRIN. TERM,
12. GEO. I.

THE rector of *Loughton*, in the county of *Bucks*, claimed the tithes of garden stuff, apples, pears, pigeons, cows, milk, lambs, sheep, wool, faggots, furze, calves, and the loppings of oak, ash, and elm.

The rector of *Loughton*, in *Buckinghamshire*, claims tithes of gardens, apples, pears, pigeons, cows, lambs, sheep, wool, fuel, calves, and wood.

The defendant *Holt* said, that he held an ancient garden in the said parish; but that no tithe in kind was due to the rector for the fruit thereof; for that, time out of mind, all occupiers of

The defendant says, that for all vegetables and fruit, except apples and pears, a garden penny is payable yearly;

ancient

THOMPSON
against
HOLT.

that no tithe is
due for pigeons ;

that there is a
modus of 2d. for
every new milch
cow, and 1½d.
for every old
milch cow fed in
the common fields,
in lieu of the
tithe milk there-
of ;

a ¾d. for a
lamb ;

of 3d. a score
for sheep win-
tered in other
parishes, in lieu
of tithe wool ;

1d. for all fire-
wood cut on
*Loughton Com-
mon*, and burnt
in the family ;

that no tithe is
due for wood
cut in the hun-
dred of *Newport
Pagnell* ;

that there is a
modus of 1½d. for
every calf wean-
ed.

ancient gardens in the said parish had paid, and ought to pay, to the rectors of the said parish, at *Easter* yearly, one penny, called a *garden penny*, in lieu of all garden stuff or fruit (except apples and pears) yearly arising in such gardens ; and he tendered the same, with his proportionable costs. He also admitted, that he had several dozen of pigeons ; but denied that he had sold any ; and insisted, that no tithes were due for them. He also admitted that he had several cows, which he had kept sometimes upon his inclosures, and sometimes in the common fields belonging to the said parish ; and insisted, that he was not accountable to the plaintiff for the tithe of such milk as was milked from the cows while they were depastured upon the common fields ; for that, time out of mind, there had been due and payable to the rector of the said parish for the time being, at *Christmas* yearly, for every new milch cow, twopence, and for every old milch cow, three halfpence, depastured on the common fields, and which he, by his answer, tendered accordingly, as also a tenth part of the value of the milk milked from his cows while depastured on his inclosures, with his proportionable costs. He also set forth that he had two lambs, and tendered the plaintiff a halfpenny a-piece for them. He also stated, that in *April* 1723 he had bought into the parish several sheep that had been wintered in other counties, and were by him shorn in the parish in that year ; but he insisted, that he was not accountable for the tithe wool of them ; for that, time out of mind, there had been due and payable, at *Christmas* yearly, eightpence a score, and so proportionably for a greater or less number which were so brought into the parish, and not wintered there, in full satisfaction of the tithe wool of such sheep so brought in. He also said, that in the said year he had caused several hundreds of furze faggots to be cut upon *Loughton Common* ; that some thereof were sold, and the rest burnt in his family ; and that there had been due and payable, at *Easter* yearly, to the rector of the said parish, one penny, called a *smoak penny*, in lieu of all wood, furze, and fuel, burnt and spent in the house of every inhabitant within the said parish ; and he tendered the same by his answer, with his proportionable costs. He also said, that the said parish of *Loughton* lay within the hundred of *Newport Pagnell* ; and that no tithe for wood of hedges, hedge-rows, bushes, willows, and furze, which were either sold, or used for firing, were ever paid within the said hundred ; that he had lopped from oak, ash, and elm trees, of above twenty years growth, several hundred of faggots ; had sold some, and spent the rest in his family ; and insisted, that no tithe was due for the same, or any thing in lieu thereof. He also set forth an account of his calves, and the price for which he had sold them ; and stated, that two thereof were weaned for the pail ; and he insisted, that a *modus* of three halfpence a calf for each calf weaned for the purpose aforesaid was due to the rector in lieu of the tithe of such calves, which he also tendered to the plaintiff.

The

The other defendants, by their answers, also insisted upon the said *modus*. THOMPSON against HOLT.

The plaintiff replied; the defendants rejoined; and divers witnesses were examined on both sides; and upon reading the proofs in the cause; The cause heard.

THE COURT ordered the defendants to account for tithe milk in kind during the time the defendant's cows were kept on their inclosed grounds and pasture lands; for the tithes of their wood and furze (except for the loppings and toppings of timber trees above twenty years growth, or burnt in their houses, or used in fencing); for the tithes of apples and pears, lambs, *Easter* offerings, pigeons sold, and such dry cows as were altogether unprofitable, and through which no tithe did otherwise accrue to the rector of the parish; but as to the other matters, they were ordered to account, according to the *modus* set forth in the answers.

The tithes of milk from cows fed on the inclosures, and of wood, furze, fruit, pigeons, and dry cows, decreed.

THE COURT FULL.

MASON against HYPE.

Buckinghamshire, 10th December 1726.

MICH. TERM,
13. GEO. 1.

THE rector of *Ludgershall*, in the county of *Bucks*, claimed all tithes in kind, both great and small, arising in the parish; and stated, that all the defendants were so well satisfied of his right to tithes in kind, that they, before *Lady Day* 1723, desired him to accept twelve shillings a-year for every yard land, in lieu of tithe hay and small tithes; that he did accept the same accordingly; and that all the defendants (except *Jones*) had paid him six shillings a yard land for the first half-year; but that they afterwards refused to perform the said agreement, or to set out their tithe hay in kind, or to make him any satisfaction for the same.

The rector of *Ludgershall*, in *Buckinghamshire*, claims both great and small tithes in kind; and states, that the parishioners had agreed to give him 12s. a year for every yard-land, in lieu of the tithe hay

thereof; but that after paying the first half-year, they had refused to perform the same.

The defendants denied that the plaintiff was entitled to any tithes, except the tithes of corn, which, with the parsonage and glebe, they said, were worth one hundred and eighty pounds a-year; and they insisted, that there is an immemorial custom, that all the proprietors and occupiers of land within the said parish shall yearly, at *Lady Day* and *Michaelmas*, pay to the rector six shillings and eightpence for every yard land occupied and possessed by them respectively, in lieu of all and all manner of small tithes whatsoever within the said parish and the titheable places thereof; and likewise that the rectors of the said parish have immemorially enjoyed two pieces of meadow, called *the Parson's Pieces*, in satisfaction for all tithes of hay within the said parish and the titheable places thereof, except the tithe hay of certain lands

The defendants admit, that the rector is entitled to the corn tithes in kind; and insist on a *modus* of 6s. 8d. a-year in lieu of small tithes;

and that the rector enjoys two meadows, called *the Parson's Fens*, in lieu of the tithe of hay, except of *Bury Lands*.

MASON
against
HYFE.
and that *Berry*
Lands are tithe
free.

lands called the *Berry Lands*. And as to the *Berry Lands* they also insisted, that above two hundred and thirty years ago the proprietors of the lands now occupied and possessed by them, or those under whom they claim, had purchased several lands from *A. Warren*, the devisee of *Sir J. Berlace*, and amongst them the said lands called the *Berry Lands*, which were conveyed to them discharged of and from all manner of tithes whatsoever; of which the said plaintiff had notice, and never made claim for any tithes of the said lands till lately. They admitted that they had made the agreement with the plaintiff; but said, that it was in dread of suits; and they set forth their titheable matters and things.

The evidence
read.

On reading the proofs in the cause; a lease granted of the tithes of the parish by one *W. Knight* to *Queen Elizabeth*, dated the second of *February*, in the twenty-fifth year of her reign; another deed of assignment of the said tithes, executed by *Queen Elizabeth* to one *C. Freeman*, dated the fourth of *June*, in the thirteenth year of her reign; and upon debate of the matter;

The small tithes
decreed.

THE COURT ordered the defendants to account for the small tithes from *Lady Day* 1723 to the filing of the bill.

An issue directed to try, whether the *Parson's Pieces* are held in lieu of the tithe of hay, except of *Berry Lands*.

And as to tithe hay in kind, a trial at law was directed upon this issue, "Whether the plaintiff and his predecessors, rectors of the said parish of *Ludgershall*, have, for time immemorial, had and enjoyed, as his and their own several right and property, the two pieces of meadow in the pleadings mentioned, called the *Parson's Pieces*, for and in lieu of, and in satisfaction for, all tithes of hay arising and growing in the said parish and the titheable places thereof, except the tithes of the lands called *Berry Lands*:" to be tried by a special jury of the county.

The defendants ordered to pay costs as to small tithes and *Berry Lands*.

THE COURT also ordered the defendants to pay costs, so far as relates to the tithes of *Berry Lands*, and to the small tithes in kind.

A verdict for the defendants.

A trial was accordingly had, and a verdict was found for the defendants.

The bill as to tithe hay, except as to the tithe hay of *Berry Lands*, dismissed.

THE COURT ordered, that so much of the bill as seeks to compel the payment and delivery of tithe hay in kind (except for *Berry Lands*) be dismissed, with costs at law and in equity.

THO. PENGELLY.
B. HALE.
LAW. CARTER.
J. COMYNS.

RAINSTORP

RAINSTORP *against* DYER.*Gloucestershire, 6th February 1726.*

HILARY TERM

13. GEO. I.

THE rector of *Compton Greenfield*, in the county of *Gloucester*, claimed all great and small tithes arising within the said rectory.

The rector of *Compton Greenfield*, in *Gloucestershire*, claims great and small tithes in kind.

The defendant insisted that a *modus* of twopence an acre is payable for every acre of *Rudgey Ground*, in lieu of the tithe hay, whether the said ground be mowed or not; but that when it is sown, then the tithe in kind is due to the rector; that twopence an acre is payable for every acre of *Flat Meadow*, if not mowed or in fallow; but that when such *Flat Meadow* is sowed, then tithe in kind belongs to the rector for every year the same is so sowed; and also that when such *Flat Meadow* is mowed, then tithe in kind is due to the rector for that year, and twopence an acre for the next succeeding year, whether the same be or be not mowed.

The defendant insists, that ad. an acre for *Rudgey Ground*, except when sowed, and ad. an acre for *Flat Meadow*, except when mowed or sowed, are payable in lieu of tithes.

THE COURT, upon reading the defendant's answer, and the proofs taken in the cause, and on debate of the matter, declared the *modus* to be a void *modus*; and ordered the defendant to account for his tithes in kind.

The *modus* declared to be void.

TAYLOR *against* CRATHORNE.*Yorkshire, 26th January 1726.*

HILARY TERM

13. GEO. I.

THE bill stated, that *W. Redman*, being seised in fee, or of some other estate of inheritance, or possessed or entitled in his own right, or in trust for his children, of, in, and to all the tithes, as well great as small, yearly arising within the villages and hamlets of *Eastness*, *Crookholme*, and *Southholme*, in the parish of *Hovingham*, in the county of *York*, lately belonging to the monastery in *Newbrough*, by indenture, dated the twenty-seventh of *June 1721*, demised the said tithes to the plaintiff for twenty-one years, at twenty shillings a-year; that the defendant occupied divers lands in the village of *Eastness*, and had several titheable matters thereon, but had refused to pay to the plaintiff the small tithes and tithes for the herbage thereof (a).

The lessee of the lay impropriator of *Hovingham*, in *Yorkshire*, claims the great and small tithes of the hamlets of *E. sness*, *Crookholme*, and *Southholme*.

(a) The defendant demurred to the bill, alledging for causes of demurrer, that the plaintiff had not set forth how *William Redman*, who appeared by the bill to be a layman, became entitled to the tithes demanded; whether by grant, prescription, or otherwise; or what estate the said *William Redman* had in the said tithes; or whether he had power to demise the same; or that any estate in the said tithes did or could pass from the said *William Redman* to the plaintiff. The demurrer was argued

on the eighteenth of May 1723, when the Court were divided in opinion: *MONTAGUE*, Chief Baron, and *GILBERT* being for over-ruling it, and *PRICE* and *PAGE* for allowing it. Whereupon, according to the course and practice of the Court in such cases, the demurrer was ordered to be over-ruled, and that the defendant should put in his answer. From this order the plaintiff appealed to THE HOUSE OF LORDS; but the appeal was dismissed.

TAYLOR
against
CRATHORNE.

The defendant admits the plaintiff's right to the great tithes; but says, that the owners of lands in those hamlets pay 3l. 6s. 8d. a-year to the Duke of Newcastle; and insists, that the same is paid in lieu of small tithes.

The cause adjourned.

The defendant admitted the plaintiff's title, and said, that *W. Redman* was, in his own right, or in trust for his children, entitled to the tithes of corn and hay within the villages and hamlets aforesaid; that the plaintiff had a lease thereof from the said *W. Redman*; and he confessed, that he was owner and occupier of several lands in *Eastnefs*; and that the plaintiff had taken the great tithes thereof; but he denied that any other tithes, except the tithes of corn and hay, had ever been paid, or were due in kind, for any lands in *Eastnefs*, *Crookholme*, and *Southholme*; but that a yearly sum of three pounds, six shillings, and eightpence, had immemorially been paid to the Duke of Newcastle, or to those under whom he claimed, in lieu of the small tithes within the village of *Eastnefs*; and therefore he insisted, that his estate at *Eastnefs* was free from the payment of small tithes.

The plaintiff replied; the defendant rejoined; and divers witnesses were examined on both sides; and the cause came on to be heard on the sixth of July last; but the plaintiff not being able to produce the will of *Watkinson Sotheby*, it was ordered to stand over upon payment of the costs of the day; and it now came on again upon the defendant's request; and upon reading the affidavit of service of *subpœna* to hear judgment upon the plaintiff; and no counsel appearing for him; and reading the said bill;

The bill dismissed.

THE COURT dismissed the bill with costs.

HILARY TERM
13. GEO. I.

RALPH against LADY PETRE; et è Contra.

Essex, 6th February 1726.

The rector of *Ingatestone*, in *Essex*, claims all great and small

THE rector of *Ingatestone*, in the county of *Essex*, claimed all the great and small tithes arising within the parish. tithes in kind.

The defendants say, that all their lands, except *Hayfield*, were parcel of the manor of *Ingatestone*;

that the said manor lands were parcel of the monastery of *St. Ethelburgh*, and came to the crown by the 31. Hen. 8. c. 13.

The defendants admitted, that the plaintiff was entitled to the great and small tithes, to *Easter* offerings, and to all duties arising within the parish; and they severally set forth what lands they had therein, and what titheable matters they had thereon; and stated, that the said lands, except *Hayfield*, had immemorially been part of the manor of *Ginge Abesse*, otherwise *Ingerstone*, otherwise *Gingeai Petram*, otherwise *Ginge Petre*; that the said manor was part of the possessions of the monastery of the virgins of the *Blessed Mary* and *St. Ethelburgh* of *Barking*, in the county of *Essex*; that the said monastery and the lands thereto belonging, on the fourteenth of November, in the thirty-first year of *Henry the Eighth*, were surrendered into the hands of the said king, in due form of law; and were by the statute 31. Hen. 8. c. 13. vested in the said king; that by virtue of a clause

clause in the said act, he and all claiming under him, were to hold the same discharged from the payment of tithes, in the same manner as the said late monastery had held the same; that *King Henry the Eighth*, by letters patent, dated the fifteenth of *December* in the same year, granted the same to the ancestors of the defendants, the ladies *Petres*; and that there had been immemorially paid to the rectors of *Ingatesstone*, an ancient *modus* of forty shillings, by half yearly payments, at *Michaelmas* and *Lady Day*, in lieu of all tithes arising from and out of the said lands, except *Hayfield*; that, before the dissolution of the said monastery, the abbess and convent had immemorially held the said lands, except *Hayfield*, discharged from the payment of tithes in kind; and that the defendants, on paying the said *modus* of forty shillings to the rector of the said rectory, ought to hold and enjoy the same so discharged from the payment of tithes; that the said lands were included in a park known by the name of *Ingatesstone Old Park*; and that there had not been any tithes in kind ever paid for the same. The defendants also stated, as to *Hayfield*, that the same formerly belonged to a farm called *Bacons*, but that it had lately been added to the said park, the same being contiguous thereto; that, time out of mind, before the said field was divided from the said farm, no tithes in kind were ever paid for the same, but only a *modus* of ten shillings a-year, by half yearly payments at *Michaelmas* and *Lady Day*, in lieu of tithes arising from *Hayfield*, and which sum had been constantly received by the plaintiff's predecessors, rectors of the said rectory. They also stated that, in an ancient book amongst the evidences of the family, there are contained very many receipts from the rectors there, for the said respective *moduses* of forty shillings and ten shillings.

The defendants filed their *cross bill* against the plaintiff *Ralph*, setting forth the matters before contained in their answers, and therein praying that the said respective *moduses* might be established by the decree of this court.

The rector put in his answer, and insisted upon his right, as rector of the parish, to the tithes of the said grounds in kind; to which respective answers, the plaintiffs in the respective causes, filed several replications, and the defendants their rejoinders; and witnesses were examined therein; and upon full debate of the matter;

THE COURT directed, that the several *moduses* insisted on by the defendants in their answers, and in their *cross bill*, be tried at law; *Ralph*, the plaintiff in the original cause, to be plaintiff at law.

Now, on the ninth of *December*, 1727, the counsel for the defendants in the original cause informed the Court, that the rector had not

RALPH
against
LADY PETRE;
et à Contra.

and that they are
only subject to a
modus of 40s. a-
year;

that they are
part of *Ingatesstone
Park*;

that *Hayfield* was
parcel of a farm
called *Bacons*, and
is only subject to
a *modus* of 10s.
a-year.

The defendants
file a *cross bill*
to establish the
said *moduses*.

The rector in-
sists on his right
to tithes in kind.

An issue direct-
ed to try the *mo-
duses*.

The plaintiff re-
fuses to try the
same.

RALPH
against
LADY PETER;
et à Contra.

thought fit to bring any action to try the said *modus*, and therefore prayed, that the said *modus* might be taken *pro confesso*, the complainant's clerk in court, having had due notice of this motion, and the plaintiff not opposing the same.

The *modus* are
taken *pro confesso*.

THE COURT, upon reading the said recited order, ordered, that the said *modus* be taken *pro confesso*; the said plaintiff not having proceeded to trial.

EASTER TERM,
13. GEO. I.

LAWRENCE against YEATES; et à Contra.

Gloucestershire, 8th May 1727.

The vicar of
Brockworth, in
Gloucestershire,
claims all tithes,
except of corn
and hay, arising
the *Lilleys*; and

THE vicar of *Brockworth*, in the county of *Gloucester*, claimed the tithes of wool, lambs, calves, and all other tithes whatsoever, for eight years last past, in kind, except the tithes of corn and hay.

on the estate called *Abbott's Wood*, on a meadow called *Mansmores*, a close called a field called *Trippetts*, with the little Orchard thereto belonging.

The defendant
says, that the vicar
is not entitled to the tithes
of either corn,
hay, or wood.

The defendant admitted, that the plaintiff was, as vicar of the parish, entitled to the tithes of wool, lambs, and to all other tithes, except the tithes of corn, hay, and wood, or to some *modus* in lieu thereof; and that he held a messuage and lands called *Abbott's Wood*, or *Brockworth Park*; a meadow called *Mansmores*, formerly consisting of two closes, but now lying open; a close called *Trippetts*; a little orchard, which was part of the said close; and a meadow called the *Lilleys*, which he rented; and he set forth what titheable matters and things he had thereon: but he insisted that he was not obliged to pay any tithes in kind for the same, or any thing in lieu thereof, to the plaintiff; and that no vicar had ever received any tithe in kind, or any thing in lieu of the same; for that the messuage and lands called *Abbott's Woods* or *Brockworth Park*, were heretofore parcel of the manor of *Droise Court*, in *Brockworth*, and formerly part of the dissolved abbey of *Saint Peter's*, in *Gloucester*; that the said abbey was one of the greater abbies; that the same came to the crown by the statute 31. Hen. 8. c. 13.; that the abbot and convent of *St. Peter's* had immemorially, and at the time of the dissolution, held and enjoyed the same, freed and discharged from the payment of any tithes in kind, or any thing in lieu thereof; that the said messuage and lands so vested in the crown, free and discharged from tithes, had ever since been so enjoyed; that the same, by letters patent, dated the fourth of September, the thirty-third year of King Henry the Eighth, were given and granted to J. Wakeman, then Bishop of *Gloucester*, and his successors for ever; and had, ever since been from time to time granted by leases for lives by the bishops of *Gloucester*, and held by their lessees and tenants, tithe free, and no demand ever made for the tithes thereof except by the plaintiff; and that the said messuage and lands, so discharged of tithes, were, by lease, dated the nine-

that the estate
called *Abbott's
Wood*, was formerly
part of the
manor of *Droise
Court*, and parcel
of the abbey
of *St. Peter's*, and
having been held
tithe free, at the
time of the dissolution
of the
said abbey, is now
free from the
payment of tithes
by virtue of the
statute, 31. Hen.
8. c. 13.

teenth

teenth of *October* 1703, devised to *W. Guise*, and his heirs, &c. under which the defendant held the same discharged as aforesaid. The defendant further stated, that the closes called *Manfmores*, *Trippetts*, and the *Little Orchard* thereto belonging, were and are part of the demesnes of the said manor of *Brockworth*; that the same with the tithes thereof were part of the possessions of the late dissolved priory of *Lanthony*, in the said city; that the said priory was one of the greater monasteries, and having come to the crown by the statute 31. *Hen.* 8. c. 13. were, by letters patent dated the twenty-sixth of *June* in the thirty-second year of *Henry the Eighth*, granted to *J. Guise*, and his heirs, and by several conveyances and descents were now vested in *Sir John Guise*; that *Sir John Guise*, by indenture in *February* 1708, demised the same to the said *W. Guise*, and his heirs, &c. for three lives, under which the defendant claimed the same; and he insisted, that the same had been enjoyed without the payment of any tithes, or any thing in lieu thereof; and that no demand had ever been made for tithes, except by the plaintiff. The defendant further insisted, that all the said lands and tenements held by him, except the close called *the Lilleys*, were legally discharged from the payment of tithes, or any thing in lieu, as aforesaid; and as to *the Lilleys*, he insisted, that no tithes in kind had ever, during the memory of man, been paid for the same, but that three shillings a-year, and no more, had been immemorially paid to the vicar, as a *modus* in lieu of all vicarial tithes; and he averred, that he had often tendered the same to him. The defendant admitted, that he had not paid any *Easter offerings*, and tendered to the plaintiff twopence a-piece for himself and his wife for each year.

The defendant, with others, filed their *cross bill* against *Lawrence*, and insisting, that the said lands, &c. were exempted from the payment of tithes, prayed, that they might be quieted in the said respective premises, and that the *modus* of three shillings, for the tithes of *the Lilleys*, might be established.

The vicar, in answer to the *cross bill*, admitted, that the priory of *Lanthony* was one of the greater dissolved monasteries; that the manor, lordship, and tithes of *Brockworth*, had come to *Henry the Eighth*; that the tithes of the *demesne lands* thereof belonged to the priory; that they were granted by *Henry the Eighth* to *John Guise*; but not the small tithes of other *demesne lands*; and that the said lands are now vested in *Sir John Guise*, but not the small tithes of other demesnes, nor the small tithes of such lands in *Brockworth*, as were let with the said demesnes belonging to the said priory of *Lanthony*. The vicar further said, that he believed, that *Sir John Guise* was the then owner of the said manor and demesnes, and that he and his tenants had held the same, and the whole tithes thereof without interruption;

LAWRENCE
against
YEATES;
et c. Contra.

that the meadow called *Manfmores*, the field called *Trippetts*; and the *Little Orchard* adjoining, are part of the *demesne lands* of the manor of *Brockworth*, which was formerly parcel of possessions of the priory of *Lanthony*, and tithes free;

and that for the close called *the Lilleys*, there is a *modus* of 3s. a-year, payable in lieu of the small tithes thereof;

and pleads a tender of what was due for *Easter offerings*.

The defendant files a *cross bill* to establish the exemptions and the *modus*.

The vicar admits the *demesne lands* of that part of the manor which belonged to the priory are tithes free; but insists on small tithes for the other parts of the *demesnes*, and for those lands belonging to the priory which were let to tenants at the time of the dissolution;

LAWRENCE
against
YEATES;
et c. Contra.

that such lands as belonged to the priory, which were let, though called the *demefne lands*, are not tithe free; and he denied that *Manfmores* and *Trippett's* are part of the demefnes of the manor of *Brockway*; or that the prior of *St. Peter's* was seised of the tithes of the estate called *Abbott's Wood*;

and insists, that by 31. Hen. 8. c. 13. it could only be enjoyed by the grantee of the crown in the same way as the prior had held it;

and claims 4d. in the pound on the yearly value;

and denies the *modus* as to the *Lilleys*.

terraption; and that the said lands did belong to the said priory, as appears by a terrier in the first fruits office, taken the twenty-sixth year of *Henry the Eighth*; but he insisted, that no other *demefne lands* are exempted from the payment of vicarial tithes; and that although the land belonging to the said priory may be called *demefne lands*, he is entitled to have vicarial tithes for the same. The vicar further said, that *Manfmores* and *Trippett's Meadow* were granted by *Sir J. Guise* to the said *W. Guise*, with the *great tithes* thereof, but not the *small tithes*; and that he had never heard that the same were the demefnes of the manor of *Brockworth*. He denied, that the said *W. Guise* had let the said two meadows and orchard, and the said closes called *Abbott's Wood*, or *Brockworth Park*, discharged from the payment of tithes. The vicar further answered, that the abbot and convent of the monastery of *Saint Peter*, in *Gloucester*, were seised of the manor of *Droife Court*, with the appurtenances, but he denied, that they were seised of the tithes thereof, or that their tenants had held any part of the said manor freed from tithes; or that the said manor, by the dissolution of the said monastery, had come to THE CROWN so discharged; for that the same being one of the greater abbies, dissolved by the said statute, it could only come to the crown in as ample a manner as the abbot had held the same; and he insisted, that the owners of several of the lands of the said abbey had paid tithes for the same in many places. He further said, that the manor of *Droife Court*, with its appurtenances, was granted to the *Bishop of Gloucester*, and his successors; but denied, that the lands were so granted discharged of tithes; for that the tenants of the said manor had yearly and immemorially paid tithes, both impropriate and vicarial, for the same, after the rate of fourpence in the pound, according to the yearly rent, in the same manner as all other landholders in the said parish had uniformly and constantly done. He also admitted, that the messuage, little orchard, and three closes aforesaid, are *Bishop's lands*, but he denied, that they were held with the manor of *Droife Court*, and insisted, that they had been leased out to different persons by the *Bishop*, time out of mind. He admitted the grant or lease by the *Bishop* to *W. Guise*, and that the plaintiff *Dorothy Guise* had no other lands in the parish. He also said, that the plaintiff *Johnson* was entitled to the close called the *Lilleys*, and had demised the same to the plaintiff *Yeates*, and that no tithes for the same had been paid in kind, for that the same had always been mowed or grazed; and the occupiers thereof had immemorially paid to the vicars fourpence in the pound of the yearly value thereof for the *small tithes*; and that the defendant, having compounded with him for the same, had paid him three shillings and two-pence yearly, for the tithes thereof; and he said, that he never had insisted on the payment of three shillings a year as a *modus* for

for the said close called *the Lilleys*, till this suit, but only on the said composition of fourpence in the pound.

The plaintiffs in each of the said causes replied; the defendants rejoined; and divers witnesses were examined on both sides; and upon reading the depositions of several witnesses on both sides; and on long debate of the matter; and upon reading the said grants to the *Bishop of Gloucester*, dated the fourth of September, in the thirty-third year of *Henry the Eighth*; the grant to *John Guise*, dated the twenty-sixth of June, in the thirty-second year of *Henry the Eighth*; the lease, dated the seventh of February 1703, made by the said *J. Guise* to *W. Guise*, of the two meadows, called *Mansmores* and *Trippetts* together with all the tithes thereof;

THE COURT was of opinion, that the vicar, notwithstanding the matters and things in the original bill, and the answer to the cross bill, mentioned, had no right to any small tithes, arising on the respective lands, formerly part of the possessions of the priory of *Lanthony*, and the late dissolved monastery of *Saint Peter*, in *Gloucester*.

THE COURT was also of opinion, that the *modus* of three shillings a-year, in lieu of all tithes for *the Lilleys*, was well proved; and that therefore the vicar was not entitled to the tithes in kind arising on the said close, but to the said *modus* of three shillings a-year only, in lieu thereof.

The original bill, as to the whole demand for the tithes therein, was accordingly dismissed with costs; and *Dorothy Guise*, *Henry Guise*, and their tenants, decreed to hold and enjoy the said messuage and lands, called *Abbott's Wood*, otherwise *Brockworth Park*, *Mansmore*, *Trippetts*, and *the Little Orchard*, clear of all tithes payable to the vicar of *Brockworth*, or any thing in lieu thereof, and be quieted in the possession thereof accordingly.

THE COURT also ordered and decreed, that the plaintiff *Johnson*, and his tenants, should hold and enjoy *the Lilleys* free from the payment of any tithes in kind to the vicar, upon the payment of the *modus* of three shillings a-year; and that the said *modus* be established; with costs as to all the matters contained in the cross bill.

THE COURT also, as to the *Easter offerings*, demanded by the original bill, did not think fit to make a decree for the same only.

LAWRENCE
against
YEATES;
et c. Contra.

The evidence read.

Abbott's Wood,
Mansmores,
Trippetts, and *the Little Orchard*, declared to be tithe free.

The *modus* of 3s. a-year as to *the Lilleys* declared good.

The original bill dismissed with costs; and the tenants quieted in the enjoyment of their estates.

The owners of *the Lilleys* quieted on paying the *modus*.

All the matters of the cross bill established with costs.

No decree for *Easter offerings* only.

THO. PENGELLY.
B. HALE.
LAW. CARTER.
J. COMYNS.

EASTER TERM
12. GEO. 1.

CUTHBERT *against* PLEYDELL.

Wiltshire, 5th May 1726.

The vicar of *Cricklade*, in *Wiltshire*, claims 40*l.* a-year, in lieu of the small tithes of that part of the *Forest of Braydon*, which lies in the parish of *Cricklade*, pursuant to a decree made in the 6th Car. i. and states, that the defendants had not paid him the whole, or, during the last year, any part of the said 40*l.* a-year.

THE vicar of *Cricklade St. Sampson (a)*, in the county of *Wilt*, stated by his bill, that in *Michaelmas Term*, in the sixth year of *Charles the First*, on hearing the cause of *the Attorney General v. the Earl of Hertford* and others, who, as lords, freeholders, and tenants of several manors and lands adjoining to his majesty's forest of *Braydon*, claimed several lands, commons, and privileges in the said forest, touching the right of the king and his farmers to inclose the said forest, and the right of common which the freeholders and tenants had therein, as also in respect of what tithes were or should be payable for the forest, by his majesty's farmers, to the vicars of *Cricklade* aforesaid, it was declared and decreed, that all the waste and inclosed grounds in *the Forest* were his majesty's soil and own demesnes, except as therein was excepted; and that his majesty and his farmers might lawfully inclose and improve the same: and, to the end that some provision might be had out of the forest to enlarge the revenue of THE CHURCH (within which parish a great part of *the Forest* did lie), according to his majesty's pious care in that behalf, by settling on the incumbent or vicar a certain yearly allowance, to be paid in lieu of all demands of tithes demandable or payable from his majesty's farmers or assigns, or the tenants or occupiers of the said lands, it was further decreed, that from thenceforth forty pounds a-year should be yearly paid out of *the Forest*, by the said farmers and occupiers to the vicar for the time being, quarterly, at the vicarage house in *Cricklade*; and that THE CROWN, and the tenants and farmers under the crown, should hold and enjoy *the Forest*, freed and discharged of all tithes; and that the said decree should be of force against all persons who had or should have any interest in the premises; that in pursuance of the decree the farmers and occupiers under the crown had constantly paid the forty pounds a-year to the vicar of *Cricklade*, for the time being, at the time appointed, until the plaintiff became vicar;

(a) On the 22d April 1671, one *Flood*, who was at that time vicar of this parish, filed his bill in the court of exchequer against *Archer*, claiming for eight years prior to the bill, the small tithes of a parcel of ground called *Archer's Hame*, lying in *Small Mead*, in the said parish. The defendant said, that no tithes had been paid for the same for fifty years then last past; that this piece of ground together with several other grounds, called *the Hames*, had been immemo-

rially held, by their respective owners, tithe free; and, upon opening the pleadings, the defendant's counsel insisted that the vicar enjoyed a piece of ground called *the Vicar's Hame*, in lieu of all small tithes arising on *the Hames*. An issue was directed to try this fact, and a verdict being found for the vicar, the defendant was decreed to pay the small tithes for *Archer's Hame*, for the time demanded by the bill.

and

and that the vicar for the time being had, by some custom, prescription, grant, or other lawful ways, immemorially received and was entitled to have and receive forty pounds, in lieu of all tithes of the improved and inclosed lands in the parish; that the plaintiff about sixteen years since had been lawfully presented vicar, and had duly discharged the cure there, and thereby become entitled to the said forty pounds a-year; that such part of the improved and inclosed forest, as lay in the said parish, had, ever since the plaintiff became vicar, been in the possession of the defendants, and the plaintiff ought to have been paid the same, according to the direction of the decree; that the defendants, to defeat the decree, had not, since the plaintiff became vicar, paid him any more than thirty pounds a-year, and the last year had paid him nothing, they pretending that what they had paid him was as much as or more than their shares of the forty pounds a-year amounted to, but the plaintiff charged, that as the lands stood liable to the payment thereof, he ought to be paid the same thereout, and the defendants themselves settle their proportions. The bill therefore prayed, that the defendants might answer the premises, and the plaintiff be relieved.

[CUTBERT
against
PLEYDELL.

The defendants answered, and admitted the decree, and set forth their respective lands and the proportions of the said forty pounds they had paid, and said they had duly answered their shares to the plaintiff, and, by their answers, prayed a *decree of inquiry*, on what part of the lands the same had been abated, since the first settlement after the decree, and what occasioned the deficiency, and that the same should be laid on the land abated.

The defendants insist that they have paid their proportions; and pray a *decree of inquiry*, as to the cause of the deficiency.]

The plaintiff replied; the defendants rejoined; and several witnesses were examined; and upon reading the decree of *Charles the First*; and upon debate of the matter;

IT IS ORDERED BY THE COURT, that a *special commission* shall issue into the country, under the seal of this court, directed to such commissioners as the deputy remembrancer shall appoint, to inquire who are the several farmers and occupiers of such part of the said inclosed lands, formerly part of the *Forest of Braydon*, which lie within the parish of *Cricklade St. Sampson*, in the county of *Wilts*, and particularly what part of such lands each farmer or occupier severally held or enjoyed, and of what yearly values the respective lands so held by them severally are; the said deputy remembrancer to appoint the time and place of executing such commission; and the costs to be reserved.

A *special commission* issued to inquire who are liable, and what lands they hold.

In pursuance of the said decree, and the deputy's certificate a *special commission* issued, and the commissioners returned their certificate, and certified the different lands, and the respective shares and values liable to the payment of the said forty pounds *per annum*, as set forth in the said certificate.

The commissioners certify accordingly.

Upon

CUTHBERT
against
PLEYDELL.

The certificate
read.

The deputy or-
dered to report
the sums which
each defendant
ought to pay.

The deputy
makes his re-
port.

The report is
confirmed.

Upon reading the said decree, order, and certificate, and the several depositions taken by virtue of the said commission, and upon debate of the matter,

IT IS ORDERED BY THE COURT, that it be referred to the deputy remembrancer to ascertain what part and proportion of the forty pounds *per annum*, due to the plaintiff from the defendants, each defendant ought to pay, according to the number of acres in his occupation; and what is due from each defendant to the plaintiff, for the arrears of the said forty pounds *per annum*, according to the like proportion. The costs to be reserved.

In pursuance of the said decree, the deputy remembrancer made his report herein, dated the twelfth of *July* 1728; and now, on the eighteenth of *July* 1728, upon hearing counsel on both sides, and reading the decree and report;

THE COURT ordered the report to be confirmed, and the several defendants to pay to the plaintiff the several sums reported due to him, and all the defendants, except the *Westwoods*, to pay to the plaintiff his costs of this suit, to be taxed, but the said plaintiff is to have no costs against the defendant *Westwood*; and that the several defendants shall for the future pay to the plaintiff forty pounds *per annum*, according to the proportions in the said report mentioned.

B. HALE.
LAW. CARTER,
J. COMYNS.

A
COLLECTION
OF
DECREES
BY
THE COURT OF EXCHEQUER
IN
TITHE - CAUSES,
DURING
THE REIGN OF GEORGE THE SECOND.

JONES *against* CLEVERDEN.

Devonshire, 3d July 1727.

TRIN. TERM,
1. GEO. 2.

THE rector of *Clovelly*, in the county of *Devon*, claimed the tithes of *herrings* taken in *Clovelly Road*, and brought in boats into or near *Clovelly Key*, between the twenty-ninth of *September* and the twenty-fifth of *December* yearly, that interval being the season for the herring fishery; and he stated, that by immemorial custom in the said parish the tithes of all *herrings* landed at or near the said key are to be paid in the following manner, *viz.* that every *Monday* morning an account or computation is to be taken of what the fish brought in during the preceeding week had amounted to and produced; that the charges of what they called a *forced cap*, or the seventh part of all the fish so caught or landed, is to be then deducted therefrom for the use of the fishing boat; and that the remainder is then to be divided into two equal parts, one of which is allotted to the owners of the nets used in catching such fish, and the other to the crew of the boat in which such fish had been caught; and that out of every twenty shillings produced in money, or to the value thereof in fish, to the boat's crews, one shilling is to be paid to the rector of the parish, in lieu of the

The rector of *Clovelly*, in *Devonshire*, is entitled, by the custom of the parish, to 1s. in every 20s. value of *herrings* brought into *Clovelly Key* by the fishermen of the parish; first deducting the *forced cap*, or one seventh part of the *herrings* so brought in.

JONES
against
CLEVERDEN.

the tithe of such fish, and after that rate or proportion for a less sum than twenty shillings ; and also the same out of every twenty shillings produced in money, or to that value in fish, to the owner or owners of the nets used in such boats ; both payments to be made by the master of each boat in the morning of the same day ; and that, by the said custom, the rector, on the same *Monday morning* in every week during the fishing season, is to read prayers suitable to the employment of fishermen ; a very long and particular prayer for the prosperity of fishermen ; the one hundred and fiftieth Psalm ; and part of the fifth chapter of *Saint Luke* ; that until last year he had constantly received such customary payment ; but that the defendants, who were masters and owners of such boats, now pretended, that there was no such custom, and that they were exempted by act of parliament from the payment of tithes. The bill therefore prayed that the testimony of the plaintiff's witnesses might be perpetuated, and the said customs established ; and an account taken of the tithes due from the defendants.

The defendants admitted, that the plaintiff was rector of the parish, but denied the customs ; and said, that they were exempt from such payment by the statute 5. *Eliz.* c. 5. and the statute 10. & 11. *Will.* 3. c. 24. and prayed the benefit of the said acts.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined ; and upon hearing counsel for the plaintiff ; and reading an affidavit of service of *subpoena* to hear judgment on the defendants ; and their answer ;

IT IS ORDERED, that the custom, as set forth in the bill, be established ; that the testimony of the plaintiff's witnesses be perpetuated ; and that the defendants account *nisi* for the tithe fish, according to the said custom ; which decree was, on the twenty-sixth of *November* 1727, made absolute on the non-appearance of the defendants ; and, on the nineteenth of *February*, the deputy made his report, which was confirmed with costs.

TRIN. TERM,
1. GEO. 2.

GWAVAS against KELYNACK.

Cornwall, 3d July 1727.

The impropriator of *Paulyn*, in *Cornwall*, is entitled to the tithes of all fish caught in *Mount's Bay*, or the adjoining seas, by the proprietors of boats usually moored in the parish, excepting fish taken for bait and fish meased in the sleeves of *seynes* — S. C. Bunb. 239. 236. S. C. 3. Bro. R. C. 479.

THE impropriator of the parish of *Paulyn*, in the county of *Cornwall*, which adjoins to the sea, and extends into *Mount's Bay*, and has, time out of mind, been a fishing town, stated, that there was in the said parish an immemorial custom, that every parishioner of the parish, and others, being proprietors or occupiers of any fishing boat or boats, net or nets, or other fishing craft, which have or hath been usually tied, moored, or kept within any part of the said rectory or

parish

GWAVAS
against
KELYNACK.

parish (at the times when they are not used in fishing) have immemorially paid, and by custom ought to pay and answer to the owners and proprietors of the said rectory, for the time being, the tenth part of all great and small fish taken or caught in the said bay, or other the adjoining sea or seas, by, in, or with such boat or boats, net or nets, or other fishing craft so usually tied, moored, or kept within the said parish aforesaid (except only such fish as, being so taken as aforesaid, have been used for bait wherewith to take other fish, and except also fish meased in the sleeves of certain nets, called *seyues*), of which no tithes are demanded; that the defendants, for several years past, had been parishioners, and had yearly caught pilchards and herrings in *Mount's Bay*, at or near *Saint Ives*, *Fowey*, *Mevagissey*, and other fishing places adjoining, by and with fishing craft usually tied, moored, and kept within the said rectory (when not actually used in fishing); but have not set out the tithes thereof, and have refused so to do, on a pretence that there is no such custom. The bill therefore prayed a discovery and account of the value of the said tithes of pilchards and herrings; that the defendants might be decreed to pay the same; and that for the future they might set out such tithes, and give proper notice of the same to the plaintiff or his agents.

The defendants admitted, that they had been, for several years past, parishioners in the parish, and had used fishing craft there; but said, that it was not always moored and kept within the parish when not used in fishing. They also admitted, that they had caught several pilchards and herrings; but they said, that they did not know what title the plaintiff had to the rectory, or that it is an ancient rectory; but believed that it adjoined to the sea, and extended into *Mount's Bay*; and they denied that there was any such custom of tithing fish as stated in the bill; and insisted, that if any such custom had prevailed there, it was unreasonable and void.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon reading several depositions, and the decree of the fourteenth of *June*, in the thirty-second year of *Charles the Second* (a); and upon full debate of counsel on both sides; it was ordered, that the custom, as laid and alledged by the bill, be referred to a trial at law upon a feigned action; in which action the plaintiff is to be at liberty to declare against any four or more of the defendants on the same custom, as extending to the parishioners of the said parish only; by leaving out the words "and others;" and the rest of the defendants, by consent, to be bound by the verdict. The costs to be reserved until such trial shall be had. And if upon such trial it shall appear that the custom doth extend to some, but

(a) See the case of *Gwavas v. Teage*, vol. 1. page 203.

OWAYAS
againſt
KELYNACK.

not to all ſorts of fiſh, then the *poſſea* is, by conſent, to be marked, as to ſuch ſorts of fiſh as the ſaid cuſtom doth extend to.

IT IS FURTHER ORDERED, by conſent, that, in the mean time, and until ſuch trial ſhall be had, the defendants ſhall reſpectively pay tithes of their fiſh to the plaintiff, in ſuch manner as they have uſed to pay the ſame of late years before the commencement of this ſuit ; but that ſuch payment ſhall be without prejudice to the defendants.

The plaintiff being diſſatisfied with the above orders petitioned for a re-hearing, which was granted by order of the ninth of *December* 1727, and the cauſe was again heard on the ninth of *May* 1728 ; when, after a full and long debate, THE COURT took time to conſider thereon until the twenty-third of *May*, when it was ordered, that the cuſtom, as laid and alledged by the plaintiff in his bill, ſhould be referred to a trial at law, before a ſpecial jury of *Middleſex*, at the bar of this court, in a feigned action by the plaintiff.

A trial was accordingly had on the fixth day of *November* laſt, before THE LORD CHIEF BARON and a ſpecial jury, who, after a long trial and full defence, gave their verdict for the plaintiff.

The cauſe came on upon the equity reſerved ; and the verdict being read, whereby it was found that, time out of mind, within the ſaid rectory and pariſh, there had been and is a cuſtom of tithing uſed and approved, “ that every pariſhioner of the ſaid pariſh, and others, being proprietors or occupiers of any fiſhing “ boat or boats, net or nets, or other fiſhing craft, which have “ or hath been uſually tied, moored, or kept, within any part of “ the ſaid rectory or pariſh, at the times when they are not uſed “ in fiſhing, by all the time aforeſaid, have or hath paid, or “ ought to pay and answer, to the owners and proprietors of the “ ſaid rectory, for the time being, the tenth part of all great and “ ſmall fiſh taken or caught in the ſaid bay, or other the “ adjoining ſea or ſeas, by, in, or with, ſuch boat or boats, “ net or nets, or other fiſhing craft ſo uſually tied, moored, or “ kept within the ſaid pariſh aforeſaid (except only ſuch fiſh “ as, being ſo taken as aforeſaid, have been uſed for bait where- “ with to take other fiſh, and except alſo fiſh meaſed in the “ ſleeves of certain nets, called *ſeynes*). ”

THE COURT, after the queſtion had been debated by counſel on each ſide, declared, that the cuſtom, as found by the jury, is a good cuſtom in law ; and ordered, that it ſhall be eſtabliſhed accordingly ; and that the defendants ſhall account, for the value of the tithes of all pilchards and herrings, being the only fiſh touching which the plaintiff ſought an account, taken by them from the twenty-fiſth of *March* 1722 to the filing of the bill ;
and

and that, in taking the account, the defendants be respectively charged, as well for such pilchards and herrings as have been so taken within the said time in drift nets, as for those which have been so taken in the cods of seyne nets, according to the said custom : the plaintiff to have his costs both at law and in equity to this time.

GWAVAS
against
KELYNACK.

THO. PENGELLY.
B. HALE.
LAW. CARTER.
J. COMYNS.

On the twenty-sixth of February 1729 the defendants appealed to THE HOUSE OF LORDS ; but after hearing counsel it was ordered and adjudged, that the appeal be dismissed, and the decree therein complained of affirmed. See 3. Bro. P. C. 479.

PENWARNE against PETER ; et è Contra.

TRIN. TERM,
1. GEO. 2.

Cornwall, 30th June 1727.

THE bill stated, that the plaintiff was seised in his demesne as of fee of and in the capital messuage, barton, and demesne lands, called *Penwarne*, lying in the parish of *Mawnan*, in the county of *Cornwall* ; that, time out of mind, the plaintiff and his ancestors had yearly paid to the rectors of *Mawnan*, four pounds, ten shillings, by equal quarterly payments, at the four usual feasts in the year, as a *modus* in lieu of the tithes of the premises ; that the rectors had, time out of mind, accepted the same in lieu of tithes ; and that the same ought to be accepted by the present rector, as no tithes in kind had ever been paid for the said estate ; but that, instead of receiving, he had endeavoured to destroy the said *modus*, and had filed his original bill in the court of common pleas for two hundred and forty pounds for the tithes of the premises for the eight or nine years that he had been rector, and proceeded to a trial therein ; and though, upon full evidence, a verdict had been given against him, yet he still refused to accept the *modus*, and insisted on tithes in kind. The bill therefore prayed, that the *modus* might be established.

The rector of *Mawnan*, in *Cornwall*, is only entitled to a *modus* of 11. 2s. 6d. a quarter, in lieu of the tithes of *Penwarne Farm*.

The rector denied the *modus*, and confessed filing an original in the common pleas, and that upon the trial a verdict was given against him ; but he insisted, that it was against evidence. He also filed his cross bill, stating himself to be rector of *Mawnan*, and insisting on tithes both great and small, and all offerings and duties whatsoever, yearly arising therein, or some satisfaction for the same ; and prayed a discovery, and an account of tithes due for the said premises.

Penwarne answered, and insisted on the *modus* in lieu of tithes.

PENWARNE
against
PETER;
et i Contra.

An issue was directed to try the *modus*; and the jury found their verdict for the plaintiff *Penwarne*.

THE COURT, after long debate, ordered the said *modus* to be established; the cross bill to be dismissed; and the said *Peter* pay to *Penwarne* his costs at law and in this court.

THO. PENGELLY.

HILARY TERM
1. GEO. 2.

JONES against HUGHES.

Gloucestershire, 5th February 1727.

The vicar of *Old Sodbury*, in *Gloucestershire*, is entitled to the tithes of milk in kind.

THE plaintiffs filed their bill, stating that, time out of mind, they, and those under whom they claimed, and all occupiers of land within the parish or vicarage of *Old Sodbury*, in the county of *Gloucester*, had yearly paid, at *Lammas*, or so soon as demanded by the vicar, fourpence, as a *modus* in lieu of the tithe milk of every cow depastured on their respective lands in the said parish, and threepence in lieu of the tithe milk of a heifer.

The defendant denied the *modus*; and the Court ordered a trial at law to try the *modus*, as in the bill alledged; and after a long trial, and full evidence given on both sides, the plaintiffs became nonsuited.

THE COURT accordingly dismissed the bill.

HILARY TERM
3. GEO. 2.

HAWES against GOODMAN; et i Contra.

Buckinghamshire, 23d February 1729.

The cowkeepers in the township of *Simpson*, in the parish of *Simpson*, in *Buckinghamshire*, pay a *modus* of 2s. for every cow with calf, and 1s. for every cow without calf, at *Christmas* yearly, in lieu of the tithes of the milk and the calves of such cows.

THE rector of *Simpson*, in the county of *Bucks*, claimed all tithes, both great and small, and particularly the tithes of milk, since *Lady Day* 1727.

The defendant said, that the parish consists of the township of *Simpson* and the endship of *Fenny Stratford*; and insisted, that all the occupiers of lands within the township of *Simpson* had immemorially paid to the rector of *Simpson* for the time being two shillings yearly at *Christmas*, or as soon after as the same was demanded, for every of their respective cows which had calves, as a certain *modus*, in lieu of the tithes of the milk and the calves of such cows, and one shilling for the tithe milk of every cow which gave milk and had no calf in that year.

The defendants filed their cross bill on behalf of themselves and of the rest of the owners and occupiers of lands in *Simpson*, to establish the said *modus*.

The rector denied that there were any such *modus*; but he admitted that he had received the said two shillings and one shilling; and insisted, that they were paid by way of *compositions* only, and not as *modus*.

Upon

Upon reading several entries in an account book of the former rector relating to the tithes of the parish; several terriers of the tithes of the rectory delivered into the court of the archdeacon of *Bucks* by the churchwardens of the said parish, in 1674, 1706, and 1724; and the proofs in the cause; the Court directed an issue to try the *modus*es set forth in the cross bill; but the plaintiff *Hawes* declined trying the issue.

THE COURT ordered the original bill to be dismissed with costs, and the *modus*es to be taken *pro confesso* upon the defendant's cross bill, with costs.

LAW. CARTER.

J. COMYNS.

W. THOMSON.

HAWES
against
GOODMAN;
et c. *Contra*.

WOOD *against* BULSTRODE.

Middlesex, 15th June 1730.

TRIN. TERM,
4. GEO. 2.

THE vicar of *Heston*, in the county of *Middlesex*, claimed the *small tithes* of a farm called *Bulstrode Farm*; a field adjoining, called *Homesalls*; two closes, called *Reed's* and *Beaver's*; three acres of land, called *Sutton Common Field*; and a hop-ground, called *Elme's Croft*.

The estate and lands called *Bulstrode*, in the parish of *Heston*, in *Middlesex*, are tithe free; and the vicar enjoys every seventh leet of the land called *the Holme Meadow*, in lieu of the *small tithes* thereof.

The defendant insisted, that the tithes of corn and grain belonged to the appropriator of the parish; that there were several lands in his the defendant's possession which paid no tithes to the vicar; and that he had paid for all the tithes arising on the four acres in *Sutton Field*. As to the tithes of two acres of meadow in the common field, called *Holme Meadow*, he insisted, that the same, time out of mind, had been divided into several parcels, called *Leets*; that the vicar and his predecessors had immemorially held and enjoyed every seventh leet, and all profits therefrom, in lieu of the tithes of the said meadow, and of every part thereof; and that, in consideration thereof, the said meadow had been, and ought to be, discharged from the payment of tithes arising on any part thereof. As to all other lands in his possession, except the said four acres and the two acres, he insisted, that they were heretofore parcel of the possessions of the dissolved priory of the *Holy Trinity*, in *Hounslow*; that the prior and his predecessors, time immemorially, until and at the time of the dissolution, held and enjoyed the said house, lands, orchards, and garden grounds, by themselves and tenants, discharged from the payment of all manner of tithes to the vicar of *Heston*; that by virtue thereof and the statute 31. *Hen.* 8. it came to THE CROWN discharged from the payment of all tithes to the vicar; and that the said lands had ever since been held so freed and discharged from tithes. He admitted that his father had paid to the plaintiff

Woon
against
BULSTRODE.

six shillings and eightpence for the said lands ; but he insisted, that it was a voluntary gift ; and therefore prayed the Court would not decree for the plaintiff.

Upon reading the answer ; the minister's accounts of the possessions of the priory of *the Holy Trinity*, of *Hounslow*, from *Michaelmas*, in the thirty-first year of *Henry the Eighth*, to *Michaelmas*, in the thirty-third year of his reign ; the proofs taken in the cause ; and on full debate ; the Court directed a trial at law on the following issue, " Whether all and every " the lands for which the defendant claims an exemption in his " answer, are exempt from the payment of tithes, as part " and parcel of the possessions of the priory of *the Holy Trinity*, " of *Hounslow* ? " and on the trial before THE LORD CHIEF BARON, in *Easter Term* last, a verdict was given for the defendant.

THE COURT accordingly dismissed the bill, with costs both at law and in equity.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

TRIN. TERM,
4. GEO. 2.

LADBROKE against TURVILL ; et è Contra.

Leicestershire, 27th June 1730.

The rector of
Aston Flamville,
in *Leicestershire*,
claims the tithes,
both great and
small, of all the
lands in the pa-
rish.

THE rector of *Aston Flamville*, with the chapelry of *Burbage*, in the county of *Leicester*, annexed, claimed all tithes, both great and small, or some compensation in lieu thereof, for six years past, stating, that in *Trinity Term* 1720 he had filed his bill for tithes due from the defendant and others, who in their answers insisted, that there is in the said parish a quantity of land inclosed, of the value of seventy pounds a-year, belonging to the rector ; that the lands in the parish are distinguished by the names of *the Ancient Inclosures* and *the New Inclosures* ; that the lands of seventy pounds a-year were given to the rector, when the ancient inclosures were first made, in lieu of all great tithes of *the Ancient Inclosures* ; that four pounds, ten shillings, had been immemorially paid in lieu of all small tithes in *the Ancient Inclosures* ; and that a certain sum of money was payable in lieu of the tithes of *the New Inclosures* ; but that the defendants made no defence, and on the hearing were decreed to account for the tithes and *Easter* offerings ; that the defendant *Turvill*, in *Hilary Term* 1720, had filed his bill in this court, insisting, that the lands of seventy pounds a-year were given by the owners of *the Ancient Inclosures* in lieu of all great tithes ; and that four pounds, ten shillings, were always paid for the small tithes thereof, making no mention of *the New Inclosures* ; but that his

bill was dismissed for want of prosecution; that in *Trinity Term* 1723 he filed another bill to the same effect; which bill was also dismissed for want of prosecution. The present bill therefore prayed, that the defendants might account for the tithes, and for *Easter* offerings during the time demanded by the bill.

LEDBROKE
against
TURVILL;
et à Contra.

The defendants admitted that the Court had made such a decree to account, and that the defendant *Turvill's* two bills were dismissed; but they insisted on the said exemption and *modus* in lieu of the great and small tithes of *the Old Inclosures*; and set forth the quantities and values of their titheable matters on both *the Ancient Inclosures* and *the New Inclosures*; and tendered the several sums in their answer mentioned for the value of their tithes in *the New Inclosures*, which the plaintiff accepted.

The defendants say, that the lands in the parish are divided into *the Old Inclosure* and *the New Inclosures*; that the rector enjoys lands of 70l. a-year, in lieu of the great

tithes of *the Old Inclosures*, and is only entitled to receive certain *moduses* in lieu of the small tithes thereof; and offer him the values of his tithes for *the New Inclosures*, which he accepts.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

In *Easter Term* 1726, *Turvill* filed his cross bill against the plaintiff, setting forth, that he and his ancestors, for one hundred years past, had been seised in fee of lands lying in the said parish; that part of the said lands, called *the Groves, the Town Close, the Gallows Close, the Day House Close, the Parks, the Great Mickle Hill, the Little Mickle Hill, and the Dove House Close*, had, time out of mind, been inclosed, and were always known and distinguished by the name of *the Old Inclosures*; that part of the said parish had been inclosed within the time of memory, and was, by way of contra-distinction, called *the New Inclosures*; that there had been immemorially, at *Easter* in every year, or so soon after as the same was demanded, paid to and accepted by the rector of the parish, the following *moduses*, in lieu of all great and small tithes of the several pieces and parcels of land in the said bill mentioned, viz. for *the Groves*, sixteen shillings; *the Town Close*, eight shillings; *the Gallows Close*, eight shillings; *the Day House Close*, two shillings; *the Parks*, nineteen shillings; *the Great Mickle Hill*, one shilling and fourpence; *the Little Mickle Hill*, twelve shillings; and *the Dove House Close*, one shilling; in all, to four pounds, ten shillings; and he prayed that the said *moduses* might be established.

The defendants file a cross bill, and state the *moduses* due for the small tithes of *the Old Inclosures*.

The rector answered, and said, that he did not know that such part of the lands called by the several names in the said bill had been, time out of mind, inclosed; and known, and distinguished by the name of *the Old Inclosures*, or that such *moduses* had been paid and accepted by the rectors of the parish; and insisted on his right to all great and small tithes, on all the lands throughout the parish, in kind.

The rector denies the *moduses*, and insists on tithes in kind.

LADBROKE

against

TURVILL;

et 2 Contra.

The evidence read; and issues directed to try the validity of the *modus*; but, on the rector refusing to go to trial, they are taken *pro confesso*.

The *modus* established, and the bill as to the *Old Inclosures* dismissed with costs.

Both causes came on to be heard this day; and on reading the deposition of *J. Foster*; a receipt, signed *J. Pitts*, dated the thirteenth of *April* 1663, with the memorandums at the bottom, and signed *J. Pitts*; another receipt, dated the fifth of *May* 1673, signed *J. Duport*; and on hearing counsel on both sides; THE COURT directed issues to try the validity of the several *modus*es alledged in the cross bill; but the rector refused to try them; and the cause now, on the twentieth of *October* 1731, standing in the paper for further directions,

THE COURT ordered the several *modus*es for the respective lands called the *Old Inclosures*, and the several divisions of them, as described and alledged in the cross bill, to be established; and the original bill, so far as it related to the *New Inclosures*, to be dismissed with costs.

THE COURT FULL.

TRIN. TERM,

4. GEO. 2.

STEPHENSON against RITSON.

Cumberland, 26th June 1730.

The lay impro-priators of *Aldstone*, in *Cumberland*, claim the tithes of corn of *Hillhouse Tenement*, of *Bailes Farm*, and of *Fairhill Farm*; and state, that no corn had been cultivated thereon until about the year 1718.

THE bill stated, that the rectory of *Aldstone*, in the county of *Cumberland*, and the corn tithes and other tithes and dues belonging thereto, were parcel of the monastery of *Hexham*; that the said rectory, church, and tithes, became, by the dissolution of the monastery, vested in THE CROWN; that *King Edward the Sixth*, being seised thereof, granted the same, by his letters patents dated the twenty-second of *December* in the third year of his reign, to *Sir John Percy* and *T. Reve*, and their heirs, to be held of the manor of *East Greenwich*; that they, by indenture inrolled on the twenty-fourth of the said month, conveyed the premises to *T. Archer* and *A. Lee* and their heirs; that the said premises had been since so conveyed that one undivided third part thereof was, before the year 1718, and now is, vested in the plaintiff *Stephenson* and his heirs; another third part in the plaintiff *Wallis* and his heirs; and another third part in *J. Radcliffe* and his heirs; of which part the plaintiff *Wallis*, before that time, was, and now is, farmer under the said *J. Radcliffe*; so that the plaintiffs had been tenants in common of the said rectory and tithes before 1718, and since that time; that the parish of *Aldstone* lying in a cold country, where the grounds are naturally barren, no corn was ever known to grow there until about the year 1718; and therefore no corn tithe till then could be demanded; that the three defendants were, before the year 1718, occupiers of the farms called *Hillhouse Tenement*, *Bailes Farm*, and *Fairhill Farm*, all lying in the said rectory; and had, for eight years past, ploughed the greater part of the ground, and sowed the same with oats, barley, big, and other grain, and had

had reaped such corn, without setting out the tithes thereof, under a pretence that no tithes in kind are due for the same; but that money was paid in lieu thereof; that the occupiers there usually farmed all their tithes, except the tithe of hay; but that sometimes the plaintiffs took their tithes in kind. The bill therefore prayed, that the defendants might answer the premises, and account for the tithe corn they had reaped during the said years.

STEPHENSON
against
RITSON.

The defendants insisted on the following *modus*: that every occupier, for the time being, of any of the *ancient tenements* within the said rectory or parish, had immemorially paid to the rectors or proprietors of the rectory, or the farmers thereof, for the time being, yearly and every year, at the feast of *Saint Martin*, or so soon after as the same was demanded, a certain sum, as peculiar to their several tenements, some more or less, in full payment and satisfaction, and in lieu and discharge of all and singular the tithes of corn, grain, and hay, yearly growing, &c. in and upon the same; which payments had, from time to time, been accepted and received in lieu and full payment and satisfaction of the said tithes of corn, grain, and hay, yearly, *viz.* for *Hillhouse Tenement*, fourpence; for *Bailes Farm*, eightpence; and for *Fairbill Farm*, eightpence; and they said, that no tithes in kind had ever been demanded till of late; and insisted on the said *modus*.

The defendants insist on a *modus* of 4d. a-year for *Hillhouse Tenement*; of 8d. a-year for *Bailes Farm*; and of 8d. a-year for *Fairbill Farm*; in lieu of the tithes of corn, grain, and hay, upon the said farms.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on in *Trinity Term*, the eighteenth of *July* 1728, when it was ordered to stand over, upon the plaintiff's paying five pounds costs of the day; and by an order of the twenty-fifth of *June* 1729, the Court gave the plaintiffs *Stephenson* and *Whitfield* (the plaintiff *Wallis* being dead), leave to amend their bill, and to take out a commission to examine witnesses to such amendments. Accordingly they amended their bill, and made *J. Radcliffe* a defendant; and set forth the said conveyance of *Archer* and *Lee*, of the twenty-fourth of *December*, in the third year of *Edward the Sixth*; and that one-third part of the said rectory, &c. became vested in the said defendant *Radcliffe* and his heirs; and the said defendant answered, and, admitting the matters as stated in the bill, said, that the said third became vested in him by several mesne conveyances.

The bill is amended on the death of one of the plaintiffs.

The plaintiff replied; the defendants rejoined; and witnesses were examined; and on reading the proofs in the cause;

THE COURT directed an issue to try, whether the several *modus* insisted upon by the defendants extend to *corn* as well as *hay*, as alledged in their answers.

An issue directed to try, whether the *modus* extend to *corn* as well as *hay*.

STEPHENSON
against
RITSON.

The jury find,
that they do ex-
tend to corn.

The bill dismiss-
ed with costs.

On the eleventh of *November* 1731, the cause came on to be further heard; and the Court being informed that the issue had been tried by a special jury, and that the jury had found that the several *modus*es, insisted upon by the defendants in their answer, did extend to *corn* as well as *hay*, as alledged in the answer;

THE COURT, upon hearing counsel on both sides, ordered the bill to be dismissed, with costs both at law and in equity.

JA. REYNOLDS.
LAW. CARTER,
J. COMYNS.
W. THOMSON.

TRIN. TERM,
4. GEO. 2.

ORDE, Spinster, against CLAVERING, Widow.

Durham, 26th June 1730.

The lands called the *Townside Farm* and the *East Demesne*, except the *Park Close* the *Widow's Meadow*, and *Lambridge*, parcel thereof, pay a *modus* of 10s. a year, on *Michaelmas Day*, to the improprator of *Sermerston*, in *Durham*, in lieu of the tithes of the *hay* cut there-
on.

THE bill stated, that *C. Orde*, about fifty years ago, was seised in fee simple of all the great and small tithes within the township of *Sermerston* and chapelry of *Auncroft*, in the county of *Durham*; that he mortgaged the same to *A. Smith* for seven hundred pounds; that *A. Smith* continued in possession thereof during his life; that in the year 1704 he made his will, and devised the same amongst his children, subject to the equity of redemption; that *E. Orde*, brother and heir of *C. Orde*, redeemed the same, and conveyed it to the plaintiff, she having paid the mortgage money; and that in *June* 1726 she was let into possession thereof; that at the time of the said mortgage, and ever after until the year 1711, the township and the lands were divided into three farms, called the *Townside*, the *East Demesne*, and the *North Demesne*; that in the year 1711 the said township was reduced into two farms, viz. the *Townside Farm*, and one moiety of the *East Demesne*, making one; and the *North Demesne Farm*, and the other part of the *East Demesne*, making the other; that the *Townside Farm*, and the moiety of the *East Demesne*, lying contiguous, were let to the defendant's husband; that the tithes thereof had been constantly paid in kind until the year 1714, when the said *Clavering* having converted the *East Demesne Lands* into meadow, disputed the plaintiff's right to the tithes of grass and hay; and that the defendant, his widow, had since, on various pretences, refused to pay the said tithes. The bill therefore prayed a discovery and payment of the tithes.

The defendant admitted the mortgage, the redemption, the division of the township, and the tenancy of her husband and herself, as stated in the bill; and insisted, that no tithes had ever been taken for hay on the said premises, but a *modus* of ten shillings yearly in lieu thereof (except of the three parcels in the

the defendant's answer excepted); that the said *modus* had always been accepted; and that she is willing and offered to pay the arrears of the same.

ORDER
against
CLAVERING.

The plaintiff replied; the defendant rejoined; and witnesses were examined; and THE COURT directed a trial at law on the issue following, *viz.* "Whether within the township or hamlet of *Seremerston* there is, and hath been, an ancient custom, for time whereof the memory of man is not to the contrary, that the owners or occupiers, for the time being, of the *Townside Farm*, and of the lands parcel of the *East Demesne Farm*, now in the possession of the defendant (other than and except a small parcel or strip of ground lying between the north end of the ridges, in a field called the *Park Close*, parcel of the *East Demesne Farm*, and adjoining on a burn or bunner there on the north parts thereof; one other small parcel of ground, at the eastmost corner of the said *Park Close*, called the *Widow's Meadow*, containing about one acre of ground; also part of the said *East Demesne Farm*; and another parcel of ground, lying on the east side of an old dyke, commonly called *Lambridge*, being also part of the said *East Demesne Farm*), have, from time to time, paid, and for all the time aforesaid used to pay, and ought to pay, to the owner or proprietor, for the time being, of the tithes of *Seremerston*, or his or their farmers or tenants, the sum of ten shillings yearly upon *Michaelmas Day* in every year, or afterwards upon demand or request thereof made, for and in lieu, recompence, and satisfaction, of all tithes of hay, yearly, and from time to time, growing, happening, and renewing, in and upon the lands and grounds before mentioned to be in the defendant's possession except the said three small parcels of ground before excepted."

The jury found the custom as above set forth.

THE COURT, upon hearing counsel, ordered the bill to be dismissed, with costs both at law and in equity.

J. A. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMPSON.

CANNING *against* COWLING.

TRIN. TERM,
4. GEO. 2.

Yorkshire, 1st June 1730.

THE plaintiff, one of the executors of *C. Greenwood*, deceased, filed his bill, setting forth, that the said *C. Greenwood* died on the fourteenth of *December 1721*, after having made his will, *scilicet*, claims tithes in *Eastby*, *Brempton*, and the *Moor*, due during the life of the testator.

The plaintiff, as executor of the impropiator of *Eastby*, in *York*.

CANNING
against
COWLING.

and appointed the plaintiff and *J. Russell* the executors thereof; that the plaintiff only proved the will; that the said *C. Greenwood* and his ancestors had, for sixty years past, been entitled to the impropriate rectory of *Easby*, and to all the tithes therein, and in *Skeeby*, *Brompton*, *Aske Wrangarne*, *Long Moors*, *High Lang Moors*, *Gingerfield*, and other places within the said rectory, in the county of *York*, and to all dues and advantages thereunto belonging; that the defendants are owners and occupiers of arable, meadow, and pasture grounds, and had, for ten years past, ploughed and sowed the same with several sorts of corn, grain, and hay, and had reaped, mowed, and inned the crops, and had depastured several cattle, and had many colts, calves, and lambs, without setting out any tithes, or making any satisfaction for the same. The bill therefore prayed, that the said defendants might set forth the quantities and values of their tithes, and account for the same.

The defendants
do not admit that
he was seised of
the rectory;

The defendants said, that they were ignorant of the time when the said *Greenwood* died; and whether he or his ancestors were seised of the said rectory and tithes; but that, about *Hilary* 1720, a bill was filed in this court, and was dismissed.

and say, that the
Moor extends to
other parishes.

The defendants *Langstaff*, *Wilson*, *Tod*, and *Sadler*, denied that they, or any of them, lived in the said parish, or occupied any lands, or had any stock therein, excepting only that the defendant *Wilson* had, for several years, kept on the *High Moor*, the *Fell*, or *High Fell*, several sheep, at several times, but not throughout the year; that part of the said *Moor* lies in *Easby*, and the other parts in the parishes of *Richin*, *Marsk*, *Kirby Hill*, otherwise *Kirby Ravensworth*; that the several parts of the *Moor* lying contiguous to each other, and not being fenced or divided, the sheep sometimes depastured on the parts of the *Moor* lying in the parishes of *Marsk*, *Richmond*, and *Kirby Hill*; that the said sheep always slept in the parish of *Gilling*; and that he, *Wilson*, had, from time to time, paid the tithes of the wool and lambs thereof to the vicar of *Gilling*; that he had also paid to the said *C. Greenwood* a yearly payment in full for his sheep depasturing on that part of the *Moor* which lies in *Easby*, and had ever since the year 1721 been an inhabitant in *Easby*; and that he now dwells on a farm there; but that, for all the time in the bill mentioned, he was no inhabitant in *Easby*, nor had any titheable matters there.

That there is a
modus of 22l. 6s.
payable yearly in
lieu of their
tithes;

The defendants *Bell*, *Allen*, *Wharton*, *Chappel*, *Cowling*, *Cloft*, and *Hedgson*, said, that they had severally, during the time in the bill mentioned, occupied several farms parcel of the manor of *Aske*, in the parish of *Easby*, under the *Duke of Wharton*, who is lord of the manor of *Aske*; that, time out of mind, there had been constantly paid and payable, by the respective lords of the said manor, when the said farms were not in lease, but in their own

own occupation, and by the respective farmers thereof when in lease, to the rector of *Easby*, or to the impropiators, or their farmers, an ancient *modus* of twenty-two pounds, six shillings a-year, at *Pentecost* and *Martinmas*, in lieu of all tithes of corn and hay yearly growing upon the said manor of *Aske*; and that no tithes of hay or corn in kind had ever been paid within the memory of man; that the said *modus* had been frequently tendered to the said *C. Greenwood*; but that he had refused to receive the same.

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against
COWLING.

All the defendants said, that there had been an ancient custom in each parish. time out of mind, to pay twopence yearly, at *Easter*, to the rector or impropiator of *Easby*, for every milch cow under five, which had been with or had a calf during the year, in full for the milk of such cow; one penny for every drape cow; and a penny for every foal under five.

and 2d. for
every milch cow
under 5, &c.

The defendant *Tod* said, that he knew nothing of the plaintiff's right to the tithes; and that for ten years he had held a close in *Easby*, and several lands in *Brumpton*, for which lands in *Brumpton* he paid a *modus*; and that the inhabitants of the said parish paid a yearly *modus* of sixteen pounds, eight shillings; that the manor of *Brumpton* was, before the dissolution, part of the monastery of *St. Agatha*, near *Richmond*; that the said lands had been held exempt of all tithes of agistment of barren and unprofitable cattle since the said dissolution; and that no tithes had ever been demanded for the same; that he had yearly paid *C. Greenwood*, for all his titheable matters, save hay, for which the tithes are not payable in kind.

That the lands
in *Brumpton* pay
only 16l. 8s. a-
year, and were
exempted from
agistment tithes,
they having
been parcel of
the monastery of
St. Agatha.

The defendants *R. Atkinson*, *C. Fryer*, and *W. Harrison* said, that they knew nothing of the will of *C. Greenwood*, or of him and his ancestors being seised in fee of the impropriate rectory of *Easby*.

The defendant *Atkinson* said, that he did not occupy any lands in *Easby*, or other places in the bill, till 1720; and that from that year he had held a farm called *Bean Yard*.

That the lands
called the *Bean
Yard*, and the
Haggarable are
tithe free;

The defendant *Fryer* said, that he held lands called the *Haggarable*, which were meadow and pasture; that he had kept no account of the titheable matters thereon, for that the said several lands, called *Bean Yard* and *Haggarable*, were formerly parcel of the late dissolved monastery aforesaid; and that no tithes in kind had ever been paid for the said lands; and both *Atkinson* and *Fryer* insisted that the plaintiff was not entitled to the same.

The defendant *Robinson* answered to the same effect; and as to a farm he rented of *Mr. Smith*, admitted that he paid the tithe of hay in kind; but as to the lands he farmed of *Burton*, he insisted, as

that *Burton Farm*
is tithe free.

the

CANNING
against
COWLING.

that *Waithwith*
Grange pay only
a *modus* of 5s.
a-year;

the other defendants had done, that it was tithe free as having been parcel of the said monastery.

The defendant *Greathead* said, that he and his father had been tenants for sixty years to a farm called *Waithwith Grange*, which was reputed to be in the parish of *Easby*, though *Waithwith*, and all the grounds adjoining to the said farm are in the parish of *Catherick*; that he is entitled to the said farm by virtue of a lease, dated the third of *April* 1718: and he set up a *modus* of five shillings a-year, in lieu of all tithes thereof; and said, that the same had been accepted by *C. Greenwood*.

that a *modus* of
2l. 12s. is paya-
ble for *Long-*
moores.

The defendant *J. Bishop* said, that in the year 1715, he leased of *Mrs. Lightfoot* a farm called *Longmoores*, in the parish of *Easby*; and admitted, that tithes in kind are due to the impropriator for *Little Jugg Meadow*, and submitted to pay them; but he insisted, that no tithes in kind are due for the said farm called *Longmoores*, but a *modus* of one pound, twelve shillings, payable yearly at *St. Mark's Day*, to the impropriator of *Easby*, in lieu of tithes of the said farm, and that no tithes in kind had ever been paid for the same. He also said, that in 1721, upon the death of his father, he became entitled to lands in the several parishes of *Brumpton* and *Easby*, and had duly paid his tithes thereof in kind to *R. Atkinson*, the farmer of the tithes thereof.

The plaintiff not
being able to
prove his title,
is permitted to
add interroga-
tories, and to ex-
amine the wit-
nesses under a
commission.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and the cause came on the eighth of *July*, in *Trinity Term*, in the second of the present king, when the plaintiff not having made out his title to the tithes, it was ordered to stand over on payment of costs; and by a subsequent order, the twentieth of *June* last, the plaintiff was permitted to add interrogatories, to be settled by the deputy, to prove his title, and to have a commission to examine witnesses to the same; and having examined them,

But on reading
the evidence,

The cause now came on to be heard; and on hearing counsel on both sides; reading several proofs; the enrolment of a deed of bargain and sale, dated the third of *February* 1612, to *F. Morris* and others, of the impropriate rectory of *Easby*, &c.; another from the said *Morris*, dated the twelfth of *February* 1612, to *F. Townley* of the said rectory; an indenture the twenty-ninth of *November* 1615, between *F. Townley* and *C. C. Moore*; and upon debate of the matter,

the bill is dis-
miss'd with
costs.

THE COURT ordered the bill to be dismissed with costs.

BURROUGH *against* WHICHCOTE, Bart.MICH. TERM,
4. GEO. 2.*Buckinghamshire, 4th December 1730.*

THE bill stated, that the plaintiff, for twenty years last past, had been legally licensed and appointed by the lord of the manor of *Latimer*, chaplain of the chapel of ease of *Isnamstead Latimers*, in the parish of *Chefbam*, in the county of *Bucks*, and had officiated as chaplain there; that in the said parish of *Chefbam*, there are two distinct rectories impropriate, the one called *Chefbam Woburne*, and the other called *Chefbam Leicefter*, with two distinct vicarages thereto belonging; that by virtue of an ancient grant, endowment, composition, or agreement, made in the reign of KING JOHN, between *W. Allen Foliott*, then lord or owner of *Latimers*, and the then abbot and convent of *Leicefter* owner of the parsonage of *Chefbam Leicefter*, the chaplain who administered in the said chapel, had or ought to have received from the parson or impropriator of the rectory of *Chefbam Leicefter* yearly, five quarters of well dressed, sound, and merchantable wheat, at *Easter* and *Michaelmas*; that the said payment had been discontinued for fifteen years; that the defendant *Whichcote* father, for forty four years before his death, had been impropriator and liable to the payment thereof; that the plaintiff had only received it for five years; that upon the death of the defendant's father he, the defendant, became entitled to the tithes, and ought to have paid the same, and the arrears, he being his father's executor, but that he, with the defendant *Harding*, had refused the same under several pretences. The plaintiff stated, that the said five quarters had been constantly paid, and that the same had been established by several orders and decrees of the court of chancery, and particularly by an order of the twenty-fifth of *January*, in the ninth year of *Charles the First*, in a cause in which *Bolam*, clerk of the chapel of *Latimers*, was plaintiff, and *Ashfield*, the impropriator of *Chefbam*, and others, were defendants. The bill therefore prayed payment of the present and all future arrears, or the value thereof.

The impropriator of the parsonage of *Chefbam Leicefter*, in the county of *Bucks*, pays five quarters of wheat yearly to the chaplain of *Isnamstead Latimer* in the said county.

The defendant *Whichcote* admitted, that the plaintiff had been chaplain of the said chapel, as stated in the bill, but denied, that he ought to receive from the impropriator of *Chefbam Leicefter*, five quarters of wheat; and stated, that his father, by indenture of lease, dated the tenth of *July* 1706, demised to *Mr. Gainsford*, the parsonage impropriate for twenty-one years, but that there was not a word mentioned therein, touching the payment of the five quarters of wheat, or any money in lieu thereof, and that therefore he ought not to demand the same of him, but of the other defendant, and only since his father's death; and he denied that the same was payable by right, but said that it had been given merely out of charity.

The

BURROUGH
against
WHICHOTE.

The defendant *Ann Harding* executrix of *Mr. Gainsford* said, that she believed, that there had anciently been and still is due the said payment to the chaplain, from the impropiator of *Chebbam Leicester*, and admitted affets, and hoped she should not be compelled to pay the arrears thereof.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on the part of the plaintiff; and the cause came on to be heard on the twenty-sixth of *November* last; and on hearing counsel, and reading the defendant's answer, it was ordered the cause should stand over. It now came on this day; and on hearing counsel, and reading several proofs in the cause;

THE COURT directed a trial at law upon this issue, "Whether five quarters, or any other and what quantity of wheat hath been anciently and yearly due and payable by the impropiator or impropiators of *Chebbam Leicester*, in the county of *Bucks*, or by his or their tenant or tenants, to the chaplain of *Latimers*, in the said county for the time being, and whether any and what sum of money hath been yearly paid in lieu thereof, by the said impropiator or impropiators of *Chebbam Leicester*, or his or their tenant or tenants, to the chaplain of *Latimers*, for the time being."

A trial was accordingly had, and a verdict given for the defendants; and upon reading the decree and *postea*;

THE COURT, on the twenty-first of *June* 1731, ordered the bill to be dismissed with costs.

But the chaplain appealed from this decree to THE HOUSE OF LORDS, and on the second of *May* 1732, his counsel prayed that the order of the house, dated the seventeenth of *April* last, between the said parties, might be made an order of this Court, which is in the words following:

DIE LUNÆ, the seventh of *April*, 1732. "After hearing counsel on the petition and appeal of the plaintiff, complaining of an order of the court of exchequer, on the fourth of *December* 1730, made herein, refusing to suffer the appellant to read certain orders and proceedings in an old cause in the court of chancery, wherein *Richard Bolam*, clerk, was plaintiff, and *T. Asbfield* and others were defendants, but directing an issue at law to be tried, as to what quantity of wheat had been anciently and yearly due and payable by the impropiator of *Chebbam Leicester*, in the county of *Bucks*, to the chaplain of *Latimers*; and further complaining of another order of the twenty-first of *June* last, dismissing the appellant's bill, with costs, both at law and in equity, and praying, that the said orders may be reversed, and that he may have such relief given him, as to this house shall seem meet; likewise

"after

BURROUGH
against
WHICHCOTE.

“ after hearing counsel upon the answer of the respondents, put
“ in to the said appeal, and due consideration had of what was
“ offered on either side in this cause ; IT IS ORDERED AND AD-
“ JUDGED by the lords spiritual and temporal in parliament
“ assembled, that the said orders in THE COURT OF EXCHEQUER,
“ complained of in the said appeal be, and the same are hereby
“ reversed. AND IT IS HEREBY DECLARED, that five quarters
“ of wheat yearly are due and payable, and of right ought to
“ be paid to the chaplain of *Latimers*, out of the rectory of
“ *Cheesham Leicester*, in such manner as the same are claimed by
“ the appellant in his original bill. BUT INASMUCH as he doth
“ admit that he hath in fact received forty shillings *per annum*,
“ from the *Lord of Latimers*, in satisfaction of one quarter of
“ wheat, parcel of the said five quarters payable yearly as afore-
“ said. AND THAT IT APPEARETH, that during the five years the
“ appellant was paid his demand before the stoppage complained
“ of in the bill, he received forty shillings a quarter in satisfac-
“ tion of the said five quarters of wheat yearly, as well for the
“ four quarters as for the one quarter, IT IS HEREBY FUR-
“ THER ORDERED, that the appellant shall be paid for the ar-
“ rears of the remaining four quarters of wheat, after the rate of
“ eight pounds *per annum*, from the time that the payment of
“ the said four quarters of wheat was stopped, till the filing of
“ the appellant's original bill, being fifteen years (which is the
“ time for which the appellant has demanded satisfaction by
“ this suit), and that the same be paid to the appellant by the
“ respondent *Sir F. Whichcote*, he admitting that he is to in-
“ demnify the other respondent, and consenting to stand in
“ his place, and the appellant being contented therewith.
“ AND IT IS HEREBY ORDERED, that the respondent *Which-*
“ *cote* do likewise pay to the appellant, being the plaintiff in
“ the original bill, his costs of the suit in equity, to be taxed
“ by the proper officer, deducting the costs at law, &c. ; AND
“ FURTHER, that the said COURT OF EXCHEQUER do cause this
“ order and judgment to be put in due execution accordingly.”

Upon reading the said order of THE HOUSE OF LORDS, signed
by WILLIAM COOPER, *clerk of Parliament*,

IT IS THIS DAY ORDERED BY THE COURT, that the said
order of THE HOUSE OF LORDS, dated the seventeenth day of
April last past, hereinbefore set forth, shall be, and the same is
hereby made an order of this court ; and that the same shall be
observed, performed, and fulfilled by all parties, according to
the true intent and meaning thereof ; and that the said defend-
ant *Sir Francis Whichcote* do pay unto the plaintiff the money
due for the arrears of wheat, according to the said order, and
that the deputy remembrancer of this court do tax the costs,
pursuant

BURROUGH
against
WHICHCOTE.

pursuant to the said order, which are to be paid pursuant to the directions of the said order.

JAS. REYNOLDS.
LAW CARTER.
J. COMYNS.
WM. THOMPSON.

HILARY TERM
4. GEO. 2.

LORD LONSDALE against BATHURST.

Yorkshire, 25th January 1730.

The manner in which the impropriator of *Arkilgarthdale*, in *Yorkshire*, is entitled to receive by special custom the tithes of such *lead ore*, dug in the said parish, as will not go through an inch riddle as it falls from the picks.

THE bill stated, that the plaintiff, for five years past had been seised in fee of the parsonage impropriate of *Arkilgarthdale*, in the county of *York*, and that, by virtue of an ancient custom therein, he, and all those whose estate he had in the said rectory, was, and had been, time out of mind, entitled to the tithes of all the *lead ore*, got in the said parish, as would not go through an inch riddle as it fell from *the pick*, when it was first digged in the mine, and that such farther part thereof, as was small enough to go through an inch riddle, at the time it was first digged out of the mine, and fell from *the pick*, was by custom exempt from any tithes to the plaintiff; that such method of tithing had been immemorially used at all mines in the said parish; that such inch riddle had been constantly kept for that purpose by all the rectors at all such mines; and that the defendant *Bathurst* was seised of several mines in the said parish, which had produced him large quantities of lead ore, but that he had combined with the other defendants, and had refused to pay the tithes thereof. The bill therefore prayed an account and satisfaction for all such tithe ore; that the plaintiff's agents might be at liberty to go down into the mines and take the tithes of the said ore underground as it fell from *the pick*, and inspect the workmen under ground, in order to prevent fraud in the mines for the future; and that the same, or some other method might be established to preserve the plaintiff's right to the said tithes.

The defendant *Bathurst* admitted, that the plaintiff was seised of the rectory, and entitled to several titheable matters therein and by custom to the tithes of such *lead ore*, after the same was buddled and washed by the owners, as would not go through an inch riddle, and that such part as did was exempt from the payment of tithes; but he denied, that the plaintiff, or his agents, had any right to go down into the mines.

The other defendants put in their answers and said, that they were employed as workmen to the defendant *Bathurst*.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading

reading the depositions in the cause ; the Court ordered a trial at law, on this issue, " Whether the plaintiff, and all those whose estate he hath in the said rectory, is, and time out of mind, have been entitled to the tithe or tenth part of all the lead ore got within the said parish of *Arkilgarthdale*, as would not go through an inch riddle, as it fell from *the Pick*, when it was first dug in the mine ; and that such other part thereof as was small enough to go through an inch riddle at the time that it was first dug out of the mine and fell from *the pick*, hath been immemorially exempt from the payment of tithe. That if upon the trial there shall appear to be any variation from the custom hereby directed to be tried, and the same shall be found by the jury who shall try the cause, the same shall be indorsed on the *poslea*."

LORD LONS-
DALE
against
BATHURST.

THE COURT also ordered, that an order, made the seventh day of *December* last, whereby the plaintiff or any agent or agents of his, by his appointment, had liberty to go down into and inspect the mines in question, and for that purpose to make use of the defendant's tackle, be enlarged in all respects till further order. And further directions to be reserved till after such trial had.

The trial came on to be heard ; and on hearing counsel, and several witnesses being examined, the parties, by consent, came to an agreement in the words following, dated the eighth of *March* last, viz. " agreed that a juror be withdrawn ; that the tithe is due as it falls from *the pick*, when first dug in the mine ; that the same shall be worked in a workman-like manner, and not broke, so as to defraud the payment of tithes, and brought up in the riddle and laid upon the bank, and the large ore which is visibly too big to go through an inch riddle shall be laid aside, and the tithe paid by measure as usual, and the boose or small ore when buddled and rough washed, put into the riddle, and such part as goes through shall pay no tithe, and what remains behind shall pay tithe ; and that this shall be made a decree of this court of exchequer, with such other directions as the Court shall think proper."

The cause, on the twentieth of *May* 1731, came on for further directions ; and upon reading the said decree and agreement ;

THE COURT ordered, that the said agreement of the parties shall be established ; that the defendants shall come to an account with the plaintiff for the tithe of all the *lead ore* demanded by the bill, according to the method prescribed by the said agreement, and satisfy and pay the plaintiff for the value thereof ; and that the said order, made the seventh day of *December* last, shall be continued till the said account shall be taken, and the further order of the Court made. The consideration of costs and further directions to be reserved till after report.

On

LORD LONS-
DALE
against
BATHURST.

On the fifteenth of *November* 1733, the cause stood in the paper of causes; but the court was informed that the parties had come to an agreement, dated the eleventh day of *March* last, for accommodating and finally adjusting all disputes and differences between them; and upon reading the same and the defendant's counsel consenting;

THE COURT ordered, that the same be made a decree of this Court, and that the parties shall be bound by and perform the same accordingly.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

MILARY TERM
4. GEO. 2.

HOWELL against MOONE.

Cornwall, 1st February 1730.

The impropriator and vicar of *Pelynt*, in *Cornwall* are respectively entitled to the great and to the small tithes in kind.

THE vicar of *Pelynt*, in the county of *Cornwall*, claimed the tithes of grass, hay, and all the small tithes, and offerings arising therein.

The defendants denied, that tithes in kind were due as in the bill is charged; and insisted, that by immemorial custom all and every the occupier and occupiers of any farm or farms, lands, or tenements lying within the said parish and the titheable places thereof, had paid yearly and every year respectively to the vicar of the said parish, or his lessee or lessees, for the time being, eightpence in the pound, and no more, and so proportionably for every less sum than one pound, of the yearly value of such farms, lands, or tenements, according to, and as the said value had been ascertained by an ancient church rate, time out of mind settled and established in the said parish, as a *modus* in lieu of all tithes whatsoever (except the tithes of coppice wood) due and payable to the vicar of the said parish, and also in lieu of all oblations and offerings due by such occupiers respectively to the vicar of the said parish, by two half yearly payments viz. fourpence at *Lady Day*, and fourpence on *Michaelmas Day*.

Several of the defendants on behalf of themselves and all other the owners and occupiers of lands in the said parish filed their cross bill against the said *Howell* and *J. F. Buller*, praying that the said *modus* might be established.

Howell insisted upon tithes in kind, and denied the *modus*.

The plaintiffs in each cause replied; the defendants rejoined; and witnesses were examined; and the cause came on to be heard on the the thirtieth of *April* last; but the Court ordered *Buller* the impropriator of the parish to be made a party to both the

the bills, which was accordingly done; and the bills amended with new charges as against him.

Buller insisted, that, as impropiator of the parish, the tithes of corn, and other great tithes belonged to him, and ought to be paid in kind; and he denied all knowledge of any *modus* in the said parish.

The causes came on as against him upon the bill and answer; and on this day they came on to be heard; and, upon hearing counsel for all parties, the court ordered the *modus*, as laid in the defendant's answer to the original bill, to be tried; and, on the trial, after full evidence given on both sides, the jury gave a verdict for the plaintiff *Howell* that there was not any such *modus*.

THE COURT therefore ordered the deputy to take an account; the cross bill to be dismissed; the vicar and impropiator to have their costs, both at law and in equity; and the defendant *Buller* to have his costs upon the amended bill.

JAS. REYNOLDS.

LAW. CARTER.

J. COMYNS.

WM. THOMSON.

KENNYDY *against* GOODWIN.

Essex, 16th May 1731.

THE rector of *South Ockenden*, in the county of *Essex*, claimed the tithes of hay, corn, and all small tithes in kind.

great and small tithes in kind.

The defendant said, that he occupied *Quince Farm* of the yearly value of thirty pounds, and insisted, that there was a *modus* payable yearly by the occupiers of the said farm to the rector of the said parish of four pounds, ten shillings, by equal half yearly payments, in lieu of all great and small tithes and other dues, yearly arising upon the said farm and the lands thereunto belonging; that the plaintiff and his predecessors had received the same until within a few years; that while he was a stranger to the existence of the said *modus*, he was prevailed on by the plaintiff to pay him five pounds, and hoped that such payment of ten shillings a-year more would not destroy the said *modus*; that the plaintiff, in *Easter Term* 1729, filed a bill against him for the tithes of the said farm; that he in his answer insisted on the said *modus*, and the plaintiff suffered the bill to be dismissed with costs; and he denied, that he occupied any other lands in the said parish; and insisted on the said *modus*.

HOWELL
against
MOORE.

EASTER TERM
4 GEO. 2.

The rector of
South Ockenden, in
Essex, claims
S.C. Bunb. 301.

The defendant
says, that he oc-
cupies *Quince*
Farm, of the va-
lue of 30l. a-
year; and that
there is a *modus*
of 4l. 10s. a-
year, payable in
lieu of all the
tithes of the said
farm.

KENNYDY
against
GOODWIN,

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;

The Court decrees the *modus* to be rank, and order the defendant to account for tithes in kind.

THE COURT ordered the defendant to account with, satisfy, and pay to the plaintiff the value of the tithes of all the titheable matters and things demanded by the bill, which he had arising on his farm called *Quince Farm*, and the lands occupied by him in the said parish of *South Ockenden*, and the titheable places thereof, during the time mentioned in the bill.

EASTER TERM
4. GEO. 2.

GORE against TOOVEY; et à Contra.

Hertfordshire, 20th May 1731.

The dean and chapter of *Christ Church*, in *Oxford*, as impropriators of the parishes of *Tring* and *Wigginton*, in *Hertfordshire*, and their lessees claim the tithes of corn and grain in the said parish in kind.

See *Pyott v. Geary*, vol. 1. page 66.

THE bill stated, that the dean and chapter of *Christ Church*, in *Oxford*, being seised in fee of the rectories impropriate of *Tring* and *Wigginton*, in the county of *Hertford*, and entitled to the tithes of corn and all sorts of grain in kind, as well in *Tring* as in *Wigginton*, did, by lease dated the sixteenth of October 1724, demise the same to the *Earl of Northampton* and *R. Freeman* to hold for twenty-one years; that the same was held in trust for the plaintiff; that the defendants for three years past had held, as tenants under *Henry Harcourt*, divers lands in *Wigginton*, containing two hundred acres, and had sowed the same with wheat and other grain, which they had carried away without setting out the tithes thereof, or making the plaintiff any recompence for the same, under a pretence that there was a *modus* of seven pounds a-year in lieu thereof; that the plaintiff had given proper notice that he would take his tithes in kind for the said land, and had demanded the same accordingly.

The defendant *Harcourt* says, that *Wigginton* is not a distinct parish, but is merely a vill in the parish of *Tring*;

The defendant *Harcourt* admitted, that the dean and chapter of *Christ Church* were entitled to the rectory of *Tring* (a), and to the tithes of all corn and grain there, and that they might have let such a lease as in the bill is stated; but he said, that he was a stranger to their being seised of the impropriate rectory of *Wigginton*, and insisted, that *Wigginton*, though called a parish, was no parish, parsonage, or rectory impropriate of itself, but that the church and chapel of *Wigginton* had been for several hundred years, and then was, only a member of and chapel to the church of *Tring*, or annexed thereto or dependant thereupon; and that the said place called *Wigginton* was a vill and laid in *Tring* parish. He also said, that the dean and chapter had de-

(a) On the 28th of June 1658, Trinity Term 10. Car. 2. *Pyott*, as lessee of the impropriate rectory of *Tring*, filed his bill against *Harcourt* for tithes of calves, sheep, lambs, apples, pears, and rabbits.

The defendant said he was willing to pay, if the plaintiff could prove his title. THE COURT, on hearing the evidence, declared that he had a good title, and decreed the tithes accordingly.

misd the church of *Tring* and chapel of *Wigginton* by the name of "the rectory of *Tring*" only, and all tithes thereunto belonging; and that he believed the said chapel had passed by such lease as part of the said rectory. He also said, that the defendants *Toovey* and *Sealing* had, for three years past, as tenants under him, held lands in *Wigginton*, which were part of an ancient park called *Pendley Park*, and parcel of the demesnes of the manor of *Pendley*, containing two hundred acres, lying on the south side of the high road leading from *Tring* to *Berkhamstead*, called the *Pott's Croft*, which the defendant *Toovey* held, *Ley* under the *Warren*, which the defendant *Sealing* held, *Barn Park*, the *Church House Park*, the *Coal Hill Park*, and the *Saint Faine Park*, called the *Park* or *Warren Park*, which was last disparted of any of the lands in *Pendley Park*; and that they were all enclosed within the pales of the said park, except seven acres which were formerly taken out of the *Ley* under the *Warren*; and he admitted that the aforesaid lands might be in *Wigginton*, but insisted, that the same were, and time out of mind had been titheable to *Aldbury* parish, and not to *Tring* or *Wigginton*; and that three pounds, six shillings, and eightpence, had been time out of mind, and still was paid to the rector or incumbent of *Aldbury*, in lieu of the great tithes yearly encreasing out of the said *Pendley Park*, and forty shillings a-year for all the small tithes; in all five pounds, six shillings, and eightpence; that the said yearly sum of three pounds, six shillings, and eightpence was constantly paid, year after year, for the great tithes of the said two hundred acres of land in *Wigginton*, in the defendants occupation, and one hundred acres more of his other part and parcel of the said ancient park, lying on the north side of the said highway, in the occupation of the defendant *Toovey* and him, and for all the other lands, if any, and not for the tithes of ninety-five acres only in the said parish of *Aldbury*, exclusive of the two hundred acres in *Wigginton*; that the said forty shillings had been, time out of mind, paid to the rector of *Aldbury*, in lieu of all small tithes yearly encreasing out of *Pendley Manor*, whereof the *Park* was part; that no tithes in kind had ever been paid for the said two hundred acres, or for the one hundred acres; and that no small tithes in kind had ever been paid from or out of *Pendley Manor*, whereof the *Park* was part, to the rector of *Tring*, *Wigginton*, or *Aldbury*. He admitted that the defendants *Toovey* and *Sealing*, not setting out their tithes was by his order; and denied that the *modus* of three pounds, six shillings, and eightpence was payable to the rector of *Aldbury*, for other lands only, and not for the lands in the possession of *Toovey* and *Sealing*, or that he had ever admitted that the said lands in their possession were within the titheable places of *Wigginton* or *Tring*, or that he had ever pretended that a *modus* of seven pounds a-year was payable to the dean and chapter of *Christ Church*, or to their lessees, for the tithes thereof. He further

GORE
against
TOOVEY;
et c. Contra.

that he is the owner of two hundred acres, called *Pendley Park*, which was parcel of the demesne lands of the manor of *Pendley*, and that although they may lie in the vill of *Wigginton*,

they have immemorially paid tithes, both great and small, to the rector of *Aldbury*, and not *Tring* or *Wigginton*;

that there is a *modus* of 3l. 6s. 8d. a-year in lieu of the great tithes, and 40s. a-year in lieu of the small tithes, not only of the said two hundred acres, but for one hundred more of the said park, and for ninety-five acres in *Aldbury*.

GORE
against
TOOVEY;
et à Contra.

said, that he believed the said dean and chapter, about twenty-six years ago, had demised to *H. Guy* the rectory of *Tring*, and that *Guy* was lessee of the tithes of *Tring* and *Wigginton*; and insisted that the said vill of *Wigginton* was not a rectory or parish of itself. He admitted, that some of the said lands lay in *Aldbury*, but insisted that the *modus* of three pounds, six shillings, and eightpence, had been paid, time out of mind, to the parish of *Aldbury*, in lieu of the *great tithes* of all the lands called *Pendley Park*, whereof the said two hundred acres were part; and said that he had never heard of any tithes in kind having been paid for all or any of the said lands, either to the rectors of *Tring* and *Wigginton*, or to any other person whatsoever.

The defendants
Toovey and *Sealing*
say they are
tenants to *Harcourt*, and hold
the said two hundred
acres.

The defendants *Toovey* and *Sealing* answered to the same effect as the defendant *Harcourt*, and set forth the quantities of corn and hay, and the values of the tithes thereof; and, confessing that they had not made the plaintiff any satisfaction for the same, disclaimed all right to the said lands, save only as tenants.

The rector of
Aldbury admits
that he has re-
ceived the *modus*.

The defendant *Davis* said, that for twenty years past, he had been rector of *Aldbury*, during which time he had received from the defendant *Harcourt*, and those under whom he claimed, three pounds, six shillings, and eightpence, in lieu of the *great tithes* of some lands belonging to *Pendley Farm*, but for what lands he could not tell; and he hoped that his interest would not be prejudiced.

The landlord
Harcourt and his
tenants file a
cross bill to es-
tablish the *modus*.

The defendants *Harcourt*, *Toovey*, and *Sealing*, filed their cross bill against the plaintiffs *Gore*, the dean and chapter of *Christ Church*, *James, Earl of Northampton*, and *R. Freeman*, setting forth, that the plaintiff *Harcourt* and his ancestors, for many years past, had been owners of the manor of *Pendley*, and of divers lands thereto belonging, and of the said two hundred acres of land, part of an ancient park called *Pendley Park*, and part of the *demesnes* of the said manor, lying on the south side aforesaid, and that the plaintiffs *Toovey* and *Sealing* were his tenants to the said acres as in their answer set forth; that by virtue of some ancient composition real, prescription, or otherwise, the tithes of all grain arising out of the said park, whereof the said two hundred acres were part, or some *modus* or composition in lieu thereof, had been, time out of mind, paid by the owners or occupiers thereof to the rector or incumbent of *Aldbury*; and that the rectors, impropiators, or farmers of the rectory, or of the tithes of *Tring*, or chapelry of *Wigginton*, had never taken tithes in kind of any corn or grain from the said lands called *Pendley Park*; that the defendant *Gore*, as lessee aforesaid, pretended that he was entitled to some money in respect of the tithes of some part of the said two hundred acres, and had prevailed on some tenants to pay him, but the plaintiff charged that no tithes in kind were ever taken for the said land, and that if any had been

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it was an imposition; that *W. Palmer*, in the tenth year of *Charles the First*, was owner of the tithes of the chapel of *Wigginton*, in the parish of *Tring*, by lease under the dean and chapter of *Christ Church*, and demanded tithes of *T. Surman*, tenant to *H. Anderson*, the plaintiff *Harcourt's* ancestor, of part of the said two hundred acres; that *Surman* refused to pay the same; that *Palmer's* servants thereupon went and took several parcels of oats as tithes of the said lands; that the said *Anderson*, in the tenth year of *Charles the First*, sued *Palmer's* servants for entering his close; that the cause was tried by a special jury at the king's bench bar, in *Michaelmas Term* in the eleventh year of *Charles the First*, when the jury found for the plaintiff, viz. on the first issue, that the defendants were guilty of the trespass, and on the second issue, that all the tithes upon the said two hundred acres had not, time out of mind, been paid, or used or ought to be paid to the rector of *Tring*; that the said verdict was recorded and final judgment given thereon, and that *Palmer* acquiesced in the same; that shortly afterwards one *Gylpin*, rector of *Aldbury*, demanded tithes in kind of the inclosed grounds called *Pendley Park*, and brought a bill in this court in *Hilary Term*, in the fourteenth year of *Charles the First*, against the said *Anderson* and *Surman* his tenant, setting forth that all tithes, both great and small, growing in *Pendley Park*, time out of mind, had been payable to the rector of *Aldbury*; that there was no real composition or *modus*; but that tithes were due in kind for the same, and prayed an account; that the defendants to the said bill set forth that all tithes of the said parish did not belong to the plaintiff, and set up the said *modus* of three pounds, six shillings, and eightpence, in full of all great tithes for *Pendley Park*, and forty shillings for the small tithes arising out of the manor of *Pendley*, and said that they had never heard that tithes in kind had ever been paid for the said park; that the cause came on to be heard, in which the only question was, whether the incumbent of *Aldbury* was entitled to tithes in kind, or to a *modus* or a composition; that in *Trinity Term*, in the seventeenth year of *Charles the First*, a trial at common law was ordered, and that *Gylpin* should bring an action against *Anderson* for the tithes of *Pendley Park*, to which he was to plead *nil debet*, and stand only on the custom or *modus decimandi*; that the trial was heard at the bar of the said court, and a verdict given for the defendant; that notwithstanding the said verdict the defendant still insists on tithes in kind. The cross bill therefore prayed that the defendant *Gore* might set forth the original lease, under which he or *H. Guy* claimed; that the dean and chapter might produce all exemplifications, copies of decrees, and other writings relating to the matters in question; and that the plaintiffs might be quieted from the defendants' demand, and the defendants be enjoined from bringing their actions.

Gore
against
TOOVEY;
et Contra.

The lessee of the
impropriators
deny the exist-
ence of the mo-
dus, and insist on
tithes in kind.

The defendant Gore said, that *Harcourt* and his ancestors had for many years been owners of the manor of *Pendley*; *Pendley Park*; and of the two hundred acres of arable land; and insisted that they laid in the parish of *Wigginton*; and that *Wigginton* was a rectory of itself, and not a vill or hamlet only to the parish of *Tring*; and he set forth the purport of his leases, and insisted, that as he had given proper notice, he was entitled to take his tithes in kind, and was not bound to accept of the seven pounds a year any longer; and he averred that he knew nothing of the proceedings stated in the bill, or of the *modus* of three pounds, six shillings, and eightpence. He admitted, that he claimed the tithes of three fields in *Aldbury* parish, worth nine pounds a-year, which were portions of tithes belonging to *Tring*, and that he had constantly taken the tithes thereof, but under what title he knew not. He said, that he paid annually sixty shillings pursuant to the covenant in his lease to the rector of *Aldbury*, but that how such payment arose he knew not.

The trustees of
the lessee deny
collusion.

The earl of *Northampton* and *R. Freeman* answered and said, that the said dean and chapter, by indenture, the sixteenth of *October* 1724, demised to them the parsonages of *Tring* and *Wigginton* for twenty-one years; that they held the same in trust for the defendant *Gore* and his family; and they denied any collusion with the dean and chapter, to give a colour to the said *Gore's* demands.

The impropria-
tors deny, that
the rector of
Aldbury is enti-
tled to the tithes
of *Pendley Park*,
and insist on
their right to
tithes in kind.

The dean and chapter of *Christ Church* said, that they had reason to believe that *Wigginton* was a parish of itself; for that the rectory of *Wigginton* was granted, by charter of *Queen Mary*, dated the seventh of *July*, in the second year of her reign, to their predecessors, with the rectory of *Tring*, by the name of the "rectory of *Tring*, and the rectories and churches of *Tring* and *Wigginton*." They also said, that they neither knew nor believed that by virtue of an ancient composition, usage, or otherwise the tithes of all corn and grain arising out of *Pendley Park*, or out of the said two hundred acres, or any *modus* or composition in lieu thereof, had, time out of mind, been paid to the rector of *Aldbury*, but believed that the impropriators of *Tring* and *Wigginton* had taken and received tithes in kind from the said lands. They also denied all knowledge of the proceedings stated in the cross bill between *Palmer* and *Surman*, and insisted, that the same could not prejudice either their right or the right of their lessees. They also denied that the *modus* of three pounds, six shillings, and eightpence, was payable as aforesaid to the rector of *Aldbury*, in lieu of *great tithes* for *Pendley Park*; and insisted, that if they had been so paid, it was wrongfully, and in prejudice to their right.

The evidence
read.

In both which causes the plaintiffs replied; the defendants rejoined; and witnesses were examined; and the cause came on to be

heard this day; and upon hearing counsel for all parties; and reading the lease of the said dean and chapter to the earl of Northampton and R. Freeman, dated the sixteenth of October 1724, the Court ordered a trial at law upon the following issues, viz.

FIRST, "Whether Wigginton be a parish of itself, or parcel of the parish of Tring?"

SECONDLY, "Whether the sum of three pounds, six shillings, and eightpence, hath been, time out of mind, and still is, paid or payable to the rector of the rectory of the parish church of Aldbury, or to his farmer of the tithes thereof for the time being, in lieu and full satisfaction of all great tithes, yearly happening, renewing, or increasing by, from, or out of the said lands called Pendley Park, as is insisted on and alledged in the defendant Harcourt's answer, to the original amended bill?" To be tried, by consent of all parties, at the bar of this court, by a special jury from the county of Herts.

On the nineteenth of June 1732, the causes came on again, when the defendant Harcourt submitted to pay tithes for the future for the whole lands in the defendants Toovey and Sealing's possession, if the plaintiff would remit the costs; but the plaintiff refused to accept of the proposal; and upon reading the verdict and *posse*;

THE COURT ordered the deputy remembrancer to take an account of what is due from the defendants to the plaintiff, for the tithes demanded by the bill; the defendants to pay to the plaintiffs in the original cause, their costs both at law and in this court; and the *cross*'s bill to be absolutely dismissed with costs.

The deputy made his report the fourteenth of April 1733, and upon the twenty-third of April 1733, upon reading the decree and report,

THE COURT ordered the report to be confirmed with subsequent costs; and that the defendants do pay to the plaintiff the sums reported due, and admitted to be due by their answers, viz. the defendant Sealing thirty-six pounds, thirteen shillings, and eightpence, and Toovey thirty-three pounds, eight shillings, and sevenpence.

JAS. REYNOLDS.
LAW. CARTER.
WM. THOMPSON.

CORRE
against
TOOVEY;
et c. Contra.

An issue directed to try,

Whether Wigginton is part of Tring.

Whether there is a *modus* of 3l. 6s. 8d. a year payable to the rector of Aldbury, for the great tithes of Pendley Park.

The defendant Harcourt submits to pay, but the plaintiff refuses to take the tithes without the costs.

The Court decrees the defendants to account for the tithes of Pendley Park in kind, and dismisses the *cross*'s bill with costs.

The deputy reports that 36l. 13s. 8d. are due from Sealing, and 33l. 8s. 7d. from Toovey.

The report confirmed.

MICH. TERM,
5. GEO. 2.

STREET against SAUNDERS.

Middlesex, 25th November 1731.

The landholders of Harrow, in Middlesex, insist on *modus*es in lieu of the small tithes of milch cows, barren cattle, fruit, lambs, wool, garden stuff, sows, and pigs.

THE plaintiffs, as landholders in the parish of Harrow, in the county of Middlesex, filed their bill to establish the following *modus*es, as payable yearly, on Michaelmas Day, to the vicar of Harrow, in lieu of small tithes, viz for every cow having a calf, fourpence, in lieu of the tithe milk, and calf of such cow; for every barren cow, fourpence, in lieu of the pasturage of such cow; for every orchard, fourpence, in lieu of the tithes of all fruit arising and accruing within the said orchard; for every garden, twopence, in lieu of tithe herbs and garden fruit, and all other the tithes arising from the said garden; for the tithes of lambs and the wool of such lambs, in case the lambs of such respective occupier do not amount to the number of seven within one year, one halfpenny a-piece for every lamb under seven; but if the number amount to seven, and less than ten, then the occupier to pay to the vicar one lamb, and the vicar to pay to the occupier three halfpence for such lambs, if but seven; if eight, the vicar to pay one penny; if nine, one halfpenny; and if ten, the vicar is to have the tenth lamb, and pay nothing; and for every sow having pigs, fourpence, in lieu of such pigs.

The vicar denies the *modus*es.

The defendant Saunders, as vicar of Harrow, answered, and denied the existence of the *modus*es.

The impropriator disclaims any title to the small tithes;

The dean and chapter of Christ Church, as impropriators of the parsonage of Harrow, denied that they claimed any right to the vicarial tithes, or to any of the titheable matters and things in the bill mentioned, or to any *modus* in lieu thereof.

and so does his lessee.

The defendant Conyers, as lessee of the dean and chapter aforesaid, disclaimed all right or title to any titheable matters mentioned in the bill, or to any *modus* in lieu thereof.

The landholders waive the *modus*es as to lambs and wool.

The plaintiffs replied specially, and thereby waived the *modus*es relating to the tithes of lambs and wool, and discharged the defendant Saunders from examining any witnesses thereon (a);

(a) On 25th June, 1730, Trinity Term, 4. Geo. 2. the present defendant Saunders, as vicar of Harrow, filed his bill in this court against *Isant* and others for the tithes of wool, lambs, cows, milk, sows, pigs, geese, goslings, fruits, and fuel wood, from May 1727, when he was inducted, to Michaelmas 1728. The defendants said, they were inhabitants of the hamlet of Pinner, in the parish of Harrow, and insisted on a composition with the former vicar of twelve shillings a-year, in lieu of the

tithes of wool, lambs, and other small tithes, and which they had regularly paid for fifty years before.—But the COURT, on reading the answer; the endowment of the vicarage of Harrow on the Hill in the year 1396; and the proofs in the cause; ordered the defendants to account for all the small tithes demanded by the bill in kind from Michaelmas 1727 to Michaelmas 1728, the plaintiff having received six shillings as the composition for the half-year preceding Michaelmas 1727.

but as to all other matters and things in the said bill mentioned, they averred and maintained the same; the vicar rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the bill and answer as against the other defendants; and upon hearing counsel for the plaintiff and all the defendants, except *Saunders*; and on reading an affidavit of service of *subpoena* to hear judgment on him; and also his answer;

STREET
against
SAUNDERS.

THE COURT ordered the several *modus*es as mentioned in the bill, except for lambs and wool, to be established and paid yearly by the plaintiffs at *Michaelmas* to the vicar, in lieu of the tithes for the said matters and things, with costs; that this decree shall be binding and conclusive against the vicar, unless cause be shewn to the contrary, he first paying to the plaintiffs five pounds costs before he be heard; and that the defendants, the dean and chapter, shall stand dismissed from the said bill, with forty shillings costs.

The several *modus*es, except as to lambs and wool, decreed *nisi*, &c.

On the eighteenth of *February* 1731, upon hearing counsel on both sides, and reading several depositions in the cause, the Court directed a trial at law to try the *modus*es, which the plaintiffs had not waived by their replication; and ordered, that the defendant *Conyers* shall be dismissed, with forty shillings costs.

An issue directed to try the *modus*es.

The trial was accordingly had; and the cause came on to be heard upon the *posse* on the ninth of *November* 1732; when, upon hearing counsel on both sides, and reading the decree and *posse*;

Verdict for the plaintiffs.

THE COURT ordered, that the several *modus*es mentioned in the said bill, *viz.* for every cow having a calf, fourpence, for and in lieu of the tithes of milk and calf of such cow; for every barren cow, fourpence, for and in lieu of the depasturage tithe of such cow; for every orchard, fourpence, for and in lieu of the tithes of all fruit arising and accruing within the said orchard; for every garden, twopence, in lieu of the tithes of herbs and garden fruit and all other tithes arising on the said garden; and for every sow having pigs, fourpence, for and in lieu of the tithe of pigs of such sow; shall be, and are hereby established and paid yearly, by the said plaintiffs, and all other inhabitants and occupiers of lands within the parish of *Harrow*, at *Michaelmas* yearly, in every year, or so soon after as demanded, to the vicar of the said parish, or his lessee or lessees for the time being, in lieu of the tithes for the said matters and things; and that the defendant *Saunders* shall pay to the plaintiffs their costs, both at law and in equity.

The *modus*es as to milch cows, barren cows, fruits, garden stuff, sows, and pigs, decreed and established.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

BRINCKLOW

MICH. TERM,
5. GEO. 2.

BRINCKLOW *against* EDMUNDS.

Buckinghamshire, 8th November 1731.

The landholders
of *Newton Long-*
ville, in *Bucking-*
hamshire, insist
on the following
modus and ex-
emptions.

S.C. Bunb. 307.

1st, That no
tithes are due
for colts or lambs
not born in the
parish, or for af-
ter pasture, or
for haum or
stubble;

2dly, that the
meal of milk of
every *Monday*
evening and
Tuesday morning,
from the *Monday*
fortnight after
Easter Day to
All Saints Day,
is payable in lieu
of the tithe milk
of the whole
year.

3dly, that a $\frac{1}{4}$ d.
is payable for every calf calved in the parish; 4thly, a *smoke penny*, in lieu of firewood; 5thly, a $\frac{1}{4}$ d.
for every sheep, on *shearing day*.

THE plaintiffs, as landholders of the parish of *Newton Long-*
ville, in the county of *Bucks*, stated, that there was, and
had been immemorially in the said parish, three large common
fields, called *the Wheat Field*, *the Bean Field*, and *the Fallow*
Field; that two of the said common fields were yearly sown;
that the third lay fallow alternately; and that the tithes of corn
and grass mowed in the said fields were due and payable to the
rector; that there was but little inclosed land in the parish
besides that which lies in the said common fields; but that the
tithes of all the grass, whether of the inclosures or the said com-
mon fields, when mowed, were also payable to the rector; and
that when grazed, or when any colts or calves were foaled or
calved thereon, he had a right either to the tithes, or to some *modus*
in lieu thereof; that there were no other lands in the said parish
wherein the occupiers of land could depasture their cattle until the
grass ground in the common fields was mowed, except upon *Wha-*
don Chase, in the parish of *Whadon*, where they had a right of com-
mon for their mares, cows, colts, and young heifers, from the
twenty-third of *April* to the feast-day of *All Saints* yearly, when
they took them and other unprofitable cattle into their yards
to eat straw and hay to make dung to meliorate their lands for
another year; that when the said colts, young heifers, and
beasts, became useful, they were brought to and kept at *Newton*
Longville; that the tithe milk of such heifers and cows was paid
to the rector as after mentioned; that no tithes within the
memory of man had been paid for any colts or lambs not yeaned
in the said parish, or for the after pasture, or for haum or stub-
ble; and that tithe milk had never been paid in any other
manner than as follows, *viz.* by the tenth evening and
morning meal's milk in kind, commencing upon the evening of
the next *Monday* (the *Monday* fortnight after *Easter Day*),
and the morning following to *All Saints Day*, yearly, to be
taken by the rector where the cows were milked (except when
agreed for a price); and that, time out of mind, no tithe milk
had been paid for the residue of the year (a); that one half-
penny, and no more, was payable for each calf calved in
the said parish, to the rector on the *Wednesday* before *Easter*
Sunday, as a *modus* for their respective calves; that one
penny, and no more, called a *smoke penny*, had been paid by each
housekeeper to the rector yearly, on the *Wednesday* before *Easter*
Sunday, as a *modus* for the firewood yearly consumed in their
dwelling-houses; that one halfpenny had been always paid by

(a) THE COURT said, that this *modus* was void upon the face of it, being
only a payment of part for the whole.

each

each owner of sheep depastured in the said parish to the rector, on *Shear Day*, as a *modus* for the tithe wool of each sheep dying in the said parish between *Candlemas Day* and *Shear Day*; that fourpence a month, and no more, had been paid yearly to the rector, upon *Shear Day*, as a *modus* for the tithe wool of every hundred sheep shorn in the said parish which had not wintered there, but had been brought in after the second of *February*, and kept till *Shearing Day*, and after that rate for every less number of sheep, and for a less time; that the method used, time out of mind, as to the tithe of lambs yeaned in the said parish, was, that where the parishioners had ten lambs, the tenth was due to the rector on *Saint Mark's Day*; if but nine, he had one on *St. Mark's Day*, paying back to the parishioner one halfpenny; if but eight, he had one, and paid back one penny; if but seven, he had one, paying back three halfpence; if but six, then the parishioner paid him six halfpence; if but five, he had twopence halfpenny; and so for four, three, two, and one; that the same method had been used as to the tithes of pigs, the rector taking the pigs that became his due at three weeks, and making choice of his pig at nine days old; that there had been also payable, on the *Wednesday* before *Easter Sunday* yearly, by each person having a cock and drake, three eggs, and for every hen and duck, two eggs, in lieu of tithes of eggs, chickens, and ducks, hatched in the said parish; that no tithes for turkies had ever been paid in the said parish, or demanded, except by the present rector; that all the said *modus*es are prescriptive payments and immemorial usages, and which the plaintiffs had paid to preceding rectors, and are ready to account for the same with the defendant, and had tendered the same to him; but which he had refused to accept, and endeavoured to break through. The bill therefore prayed, that the said *modus*es, rates, and customary manners of payment, might be established, and that an injunction might issue.

The defendant admitted, that there were the three common fields as stated in the bill; that two were usually sowed, and that one laid fallow; that there were inclosed lands which lay in the common fields; and that the tithes of all the grass ground were due to him; but he denied that there is no other land in the said parish, or elsewhere, where the plaintiffs could depasture their cattle. He admitted that the occupiers of land have a right in *Whaddon Chase*, as stated in the bill; and also, that they fed their cows in their yards; but said, that they were not all the time kept upon straw and hay, but were also fed in the inclosures, where many dropt their calves in winter. He also admitted, that many colts, beasts, and heifers, when they are useful, are worked; but said, that he believed the defendants had others which were sold. He also admitted, that no tithes were due of colts fallen or lambs yeaned out of the parish; but insisted, that he was entitled to tithes in kind of colts fallen and lambs yeaned therein, and of the agistment of those

BRINCKLOW
against
EDMUNDS.

6thly, 4d. a month for every 100 sheep shorn, in lieu of tithe wool.

7thly, that one lamb in ten is payable on *Saint Mark's Day*; and if less than ten, the rector to have one, and to pay so much, &c.

8thly, the same *modus* as to pigs.

9thly, three eggs for a cock and a drake, and two for a hen and a duck.

10thly, that no tithes are paid for turkies.

The defendant insists on the tithes of hay in the common fields and inclosures;

admits that no tithes are due for colts and lambs born out of the parish;

those

BRINCKLOW
against
EDMONDS.

that no tithes
are due for after
pasture, or for
haum, or stub-
ble;

but insists on the
tithes of milk
and turkies;

and admits the
other *modus*.

The evidence is
read.

The *modus* as to
calves, firewood,
sheep and wool,
lambs and pigs,
cocks and hens,
ducks and
drakes, esta-
blished;

but as to milk
and turkies, the
bill is dismissed
with costs.

those which were yeaned out of the parish, and afterwards brought into and depastured therein, or removed at any time before the defendant had the tithes of them. He admitted, that no tithe was due for after-pasture, nor for haum or stubble of corn cut therein, provided it was cut fairly. He denied that he knew that the pretended customs, as stated in the bill, had been kept, time out of mind, within the parish; but said, that as to the custom of paying tithe milk, and the tithes of turkies, he had filed his bill against some of the plaintiffs, and demanded the tithes of the same; that the defendants thereupon insisted on the said custom for tithe milk for part of the year, as also for turkies; but that he obtained a decree for the same (a). He admitted, that ever since he had been rector he had accepted of the several *modus* insisted on in the bill, in lieu of the tithes of calves, wood burnt in the house, dead sheep, chickens, and ducks; and said, that he was still willing to receive the same.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on the part of the plaintiffs; and upon hearing counsel, and reading several depositions;

THE COURT ordered, that the several *modus* set forth by the bill should be established and paid yearly by the plaintiffs and all other the inhabitants and occupiers of lands within the said parish, at the times before mentioned, to the rector of the said parish, or his lessee or lessees, for the time being, in lieu of all tithes for the matters and things therein mentioned, with costs, viz. the *modus* for calves, smoke penny, sheep depastured, wool, lambs, pigs, cocks and drakes, and hens and ducks; and that as to all other matters and things for which the

(a) On the 3d of July 1729, Trinity Term, 3. Geo. 2. the rector of *Newton Longville*, who had been promoted thereto in the year 1727, filed his bill against *Cook*, *Tomkins*, *Paga*, and others, for the tithes of the said parish, and particularly for the tithes of forty acres of land, belonging to *Tomkins*, and in the occupation of *Cook*, at *London End*. The defendants, as to the tithes of milk, calves, firewood, sheep, pigs, poultry, and turkies, set forth the same *modus* as stated in the answer to the present bill; and the defendants *Cook* and *Tomkins* also insisted, that the forty acres of land at *London End* had, in former ages, been given to provide lambs for the high altar; that they had formerly belonged to the monks of *Normandy*; that they had come tithe free into the hands of the crown; that the crown had granted them tithe free to *New College*, in *Ox-*

ford, to be held as the monks of *Normandy* had held them; that the said monks had held them tithe free; and that the defendant *Tomkins* and his ancestors had held them discharged from the payment of tithes for more than a century. The plaintiff filed a special replication, and therein insisted on the tithes of *Gifford's Close*; of the tithes of the forty acres at *London End*; of the tithes of milk, hay, wool, sheep, lambs, and turkies in kind; and for the depasturing of sheep and other cattle. THE COURT, after reading the grant to *New College*, dated 24th July, in the first year of *Edward the Fourth*; and a terrier, dated 6th October 1607; ordered the bill to be dismissed as to the tithes of the forty acres at *London End*; and that the defendants should account for all the other tithes demanded by the bill, and not waived by the replication, in kind.

plaintiff

plaintiffs pray relief by their bill, the same shall be dismissed with costs.

BRINCKLOW

against

EDMUNDS,

JA. REYNOLDS.

LAW. CARTER.

J. COMYNS.

WM. THOMSON.

BOND against BARROW and THE ATTORNEY GENERAL.

HILARY TERM

5. GEO. 2.

Gloucestershire, 27th January 1731.

THE bill stated, that *Edward the First*, being seised of the *Forest of Dean*, in right of his crown, did, by letters patents, dated the twentieth of *March*, in the thirty-third year of his reign, grant to the then *Bishop of Llandaff*, who then enjoyed the rectory impropriate and perpetual advowson of the parish-church of *Newland*, in the *Forest of Dean*, and his successors for ever, to the use of the said church, the tithes of all the extraparochial lands, then assarted or afterwards to be assarted, within the bounds of the said *Forest of Dean*; and that they have ever since enjoyed the same; that on the first of *November* 1728, the then *Bishop of Llandaff* did, by lease, demise to the plaintiff the said rectory and tithes for twenty-one years; and by another lease, dated the second of the said *November*, did demise to the plaintiff "all manner of tithes of the said assarted lands;" and that the plaintiff is thereby entitled to the same, or to a satisfaction in lieu thereof; that the defendant *Barrow* occupied lands assarted from the said forest, and not within any parish, called *White Mead*, from which he had cut wheat, barley, and other grain, and also hay and clover; the tithes of which he had refused to pay to the plaintiff, under several pretences. The bill therefore prayed a discovery, and satisfaction for the same.

The impropriator of *Newland*, in *Gloucestershire*, claims, under the grant of *Edward the First*, the tithes of assarted lands within the *Forest of Dean*.

S.C. Bunb 312.

Hob. 132.

The defendant *Barrow* said, that *King Edward the First* was seised of the *Forest of Dean*; but whether the grant, as stated, was made to the *Bishop of Llandaff*, or whether he held the rectory together with the assarted lands, he knew not; and he denied that he had occupied any assarted lands from *Lady Day* 1729; but admitted, that he was in possession of some arable, meadow, and woodland, part of a farm lately inclosed and fenced in from the said *Forest of Dean*, called the *White Mead Park*, and which was extraparochial; that it had been part of the *Forest of Dean*, and was granted by THE CROWN to the king's tenants; that *George the First*, by letters patents, dated the sixteenth of *February*, in the thirteenth year of his reign, granted the said farm and lands to *Lord Berkley* for thirty-one years, who demised the same to the defendant; that the said farm being extraparochial, and in the said *Forest of Dean*, he had refused to

The defendant says, that he does not occupy any of the assarted lands, but that he occupies *White Mead Park*, which was extraparochial, and formerly part of the *Forest of Dean*; and he derives a title thereto from the crown.

account

BOND
against
BARROW AND
THE ATTOR-
NEY GENERAL.

The evidence
read,

account for the tithes thereof; and he put the plaintiff to prove his right and title thereto.

The Attorney General answered, and said, that he was a stranger to the matters charged in the bill; and prayed the court would take notice of the rights of THE CROWN therein.

The plaintiff replied; the defendant *Barrow* rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading true copies from the records in THE TOWER of a grant from *King Edward the First*, dated the twentieth of *March*, in the thirty-third year of his reign, to the then *Bishop of Llandaff*, of the tithes of the lands *de novo assartatis et assartandis*, within the *Forest of Dean*; a writ of assistance, dated the eighteenth of *November*, in the second year of *Edward the Second*, directed to the then keeper of the *Forest of Dean*; a lease from the *Bishop of Llandaff*, dated the first of *November* 1728, to the plaintiff, of his parsonage and rectory of *Newland*; another lease, signed *Robert Landaff*, of the second of *November* 1728, from the said bishop to the plaintiff, of all the tithes of the assart lands extraparochoial within the *Forest of Dean*; and upon hearing what was alledged by counsel on both sides;

The bill dismissed.
6ed.

THE COURT dismissed the bill with costs.

J. A. REYNOLDS.
LAW. CARTER.
J. COMYNS.
W. THOMSON.

HILARY TERM
5. GEO. 2.

SWYNFEN *against* DIGBY.

Staffordshire, 19th February 1731.

The plaintiff demands the tithes of wood and turnips within the prebend of *Weeford*, in the county of *Stafford*.

S.C. Bunb. 314.

THE bill stated, that by lease, dated the twenty-fifth of *June* 1690, between *J. Manwaring*, prebendary of *Weeford*, in the church of *Litchfield*, and *John Swynfen*, the said *J. Manwaring* demised the said prebend, with all tithes and appurtenances, to hold for the lives of the plaintiff and his two brothers; that, by virtue thereof, the said *John Swynfen* entered, and became entitled to the premises; that he made his will the twentieth of *March* 1693, and devised the premises to the plaintiff's mother for life, and after her death to be divided amongst all other children, other than the eldest son then living; that he died in 1694; that his wife enjoyed the same till her death in 1618; and that the same descended to the plaintiff and others, being the four younger children; that, by indentures of lease and release, dated the fifth and sixth of *March* 1721, between the plaintiff's eldest brother and the plaintiff and his other brothers and sisters, their shares were conveyed

to the plaintiffs *Elizabeth* and *Richard Swynfen*; that the plaintiffs being executors of *Richard*, who died, they became entitled to the said prebend and tithes in the said parish; and that being so seised, they proved the said will; that the defendant *Twyford*, for eight years past, had been occupier of lands in the said parish, the freehold of which was, for the greater part of the time, in the defendant *Digby*, and her son, deceased, and so continued till his death, when they descended to his sisters, the defendants; that great quantities of underwood, coppice wood, and other wood not being timber in *Weeford*, and also great quantities of thick broom, were cut, sold, and converted into cordwood and kidwood, the tithes whereof the plaintiffs were entitled to; that the said defendant had several acres of land sowed with *turnips*, clover, rye grass, and other grass, which he made into hay; and that he had barren cattle depastured thereon, and many cows and calves, the tithes whereof were due to the plaintiffs, but which he refused, under several pretences, to pay. The bill therefore prayed an account, and satisfaction for the same.

SWYNFEN
against
DIGBY.

The defendants *Digby* and others, infants, by their guardian, said, that they were strangers to the plaintiff's title, and leave them to the proof thereof. They admitted that *Twyford* was occupier of lands in *Weeford*, and that the inheritance thereof was in *John Digby* and the defendant *Jane*, and so continued till his death; and that her son being a minor, she caused to be fallen in *Weeford* a considerable quantity of coppice wood, and underwood not being timber, the greater part being twenty-seven years growth, three parts in four sprung from the roots of oak trees formerly cut down, and the residue made up of hazle, birch, and other wood. He said, the cordwood was sold to be converted into charcoal; and set forth the quantity so cut; but denied that the plaintiffs are intitled to the tithes of wood, or any satisfaction for it; for that no tithe wood had been used to be paid in the hundred of *Offlow*; or that they had pretended that the lands from whence the wood was cut are discharged of tithes as situated in *Weeford*, but as lying in the hundred of *Offlow*, by reason of the custom there.

The defendant *Digby* says, that the wood was cut within the hundred of *Offlow*, and that no tithes are payable for wood cut therein.

The defendant *Twyford* set forth the land he held, and what he had thereon; and said, that no tithe for *turnips* was due; and he set up a *modus* of two shillings an acre for tithe hay, and three halfpence for every cow and calf, in lieu of tithe calves and milk; and said, that he was always ready to pay the same; and that he had compounded for tithe corn; and as to tithe wood insisted on the custom in *Offlow*.

The defendant *Twyford* says, that the *turnips* were sown after corn was reaped, and that therefore no tithes are due.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and on full debate, the Court directed a trial at law on this issue,

“ Whether

An issue directed to try, whether there is a custom *de non decimando* in the hundred of *Offlow*.

SWYMFEN
against
DAGBY.

The defendant
Twysford ordered
to account for
the tithes of tur-
nips.

A verdict as to
the custom for
the defendants.

The bill dismis-
sed, as to tithe
wood, with
costs.

“Whether there be a custom of *non decimando* in the hundred of
“*Offlow* for tithe wood?”

THE COURT also ordered the defendant *Twysford* to account
for the tithe of *turnips* (a) by him had, received, and converted
to his own use; and dismissed the bill as to the other demands.

A trial was accordingly had, and a verdict given for the
plaintiffs; but being contrary to evidence, as appeared by the
judge's report, a new trial was granted, on the fifteenth of
November 1733, on payment of costs; and on the new trial, a
verdict was given for the defendants.

THE COURT accordingly ordered the bill to be dismissed with
costs, both at law and in this court, excepting for the tithes of
turnips due from the defendant *Twysford*, and decreed to the
plaintiffs as aforesaid.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

(a) The Court declared, that where
land is sown with turnips after the corn
is cleared, and fed with sheep and
barren cattle, tithe shall be paid of
such turnips; though it was insisted
upon for the defendant, that the soil of
Staffordshire was dry and sandy, and that
this method of husbandry improved the

land so that the plaintiff had *abridged*
decimas of corn, and had received the
tithe of lambs and wool of the sheep so
fed; but the COURT over ruled this
defence; and said, it amounted to a
non decimando as to turnips. S. C. Bemb.
314.

HILARY TERM
5. GEO. 2.

LEIGH against LADY FAUCONBERGH.

Cheshire, 19th February 1731.

There is a *modus*
of 4l. 10s. a-
year, payable
half yearly, at
Michaelmas and
Lady Day, to the
impropriator of
Presbury, in *Che-*
shire, in lieu of
all tithes, both
great and small,
arising on the
Demesne Lands of
the manor of
Sutton.

THE bill stated, that the plaintiff, for several years past, had
been seised in fee, or for life, of the rectory impropriate of
Presbury, in the county of *Cheshire*, and was thereby entitled to
the tithes of all corn, grain, hay, and other tithes, great, small,
predial, personal, and mixed, smoke pennies, *Haster* rolls, and
mortuaries arising therein, except the tithes in *Fallibroome*,
Upton, and *Seddington*, which are due to the vicar of *Presbury*,
and in *Capesthorpe*, which are due to *J. Ward*; that the town-
ships, the manor, and the *demesne* of *Sutton*, lie within the parish
of *Presbury*, and are part of the rectory; and that the great and
small tithes therein arising are due to the plaintiff, and not to the
vicar; that the defendants severally held and enjoyed lands,
orchards, and gardens, within the parish of *Presbury* and in
Sutton aforesaid; but that they refused, under several pretences,
to pay the tithes thereof. And therefore that the defendants
might account, and pay the plaintiff his tithes, was the prayer of
the bill.

The

LEIGH
against
LADY
FAUCONBERGH

The defendant *Lady Fauconbergh* did not admit the plaintiff's title to the rectory, but left him to prove it; and said, that the township, manor, and *demesnes* of *Sutton*, lie within the said parish, and are part of the rectory; and that she held in the said parish part of a house, and two small gardens, and no other land; and she set forth what she grew and fed, and what titheable matters she had had thereon; but she insisted, that the plaintiff was not entitled to the great and small tithes of the said parish, for that part of the said house and gardens were parcel of the *demesnes* of the manor of *Sutton*; that the *Demesnes* contained three hundred *Chefbire* acres, and were in the occupation of the other defendants; that the owners of the said *Demesnes* had yearly, by half-yearly payments, at *Michaelmas* and *Lady Day*, or as soon after as demanded, immemorially paid to the rectors or impropiators of the said parish, or their lessees, four pounds, ten shillings, as a *modus* in lieu of all tithes, great and small, arising on the *Demesnes*, or any part thereof; that the said sum had immemorially been accepted in lieu of the tithes; and that no tithes in kind had ever been paid for the said *Demesnes* until a few years ago; when she, being ignorant of the said *modus*, had paid the same.

The other defendants put in the like answers.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and the Court directed a trial at law on this issue, *viz.* "Whether the sum of four pounds, ten shillings, mentioned in the defendant's answer, had been, time out of mind, paid and payable yearly and every year, by two equal half-yearly payments, *viz.* at *Michaelmas* and *Lady Day*, or as soon after as demanded, to the rector or impropiator of *Presbury*, in the county palatine of *Chester*, for the time being, for and in lieu and satisfaction of all tithes, both great and small, yearly happening, arising, or renewing, on the *Demesnes* of the manor of *Sutton*, due and payable to the rector or impropiator for the time being."

On the sixteenth of *November* 1732, the decree and *posse* were read, and the bill was dismissed with costs at law and in equity.

POOR against SEYMOUR.

Wiltshire, 19th February 1731.

HILARY TERM
5. GEO. 2.

THE bill stated, that *Eleanor Poor*, widow, being seised in fee of the tithes of corn, wool, hay, lambs, and all other tithes of *Alton Parva* and *Alton Magna*, in the parish of *Fighelden*, in the county of *Wilts*, and of all houses, buildings, barns, stables, &c. to the same belonging, did, by lease dated the twenty-ninth of

The impropiator of *Fighelden*, in *Wiltshire*, claims the tithe of sheep, lambs, wool, pigeons, honey, and wax,

arising on *Alton Magna Farm*; and the tithe herbage of sheep from the time they were shorn until they were sold. . . . S. C. Bunb. 313.

POOR
against
SEYMOUR.

September 1725, demise the same to the plaintiff for three years, except the tithes of *Maiden Down* or *Old Lanes*, at seventy pounds a-year; that the plaintiff, by virtue of the said demise, became entitled to the tithes, except as aforesaid; that *William Seymour*, during that time, between the twenty-ninth of September and the day of his death in August 1727, occupied *Alton Magna Farm*, and, in the year 1726, kept thereon sheep, ewes, and lambs, and, in the year 1727, shorn the wool thereof; that he also had bees, honey, wax, and pigeons, which he sold; that he had cut furze, which he also sold, for all which he ought to have paid the plaintiff tithes in kind; that from the death of *William Seymour*, the defendant, his son, had possessed his personal estate, and had ever since occupied *Alton Magna Farm*, and in the years 1727 and 1728 had the like titheable matters thereon; that he had also bred pigs and pigeons; that he had sold off the said farm a number of ewes and other sheep in each year, which had been depastured there from the time of sheering for three, four, or five months, and that there ought to have been paid to the plaintiff one farthing a month for the tithe of the pasturage of each sheep, computing the same from shearing time until so sold; that he ought to have set out and paid tithes in kind for the other titheable matters from off twenty-two acres of arable, and one acre and four lugs of meadow, parcel of the said farm; but that he had refused the payment thereof, under various pretences. The bill therefore prayed, that the defendant might set forth the quantities, qualities, and values of the tithes during the said year; and whether any *modus* was insisted upon; and account for and pay the full values, as well of the tithes due from his father as those which were due from himself.

The defendant says, his father held *Alton Magna Farm* until his death, and that he had since been in the possession of it;

that the sheep he kept thereon were merely for the purpose of manuring the arable lands; and that from shearing time until they were sold was about three months;

The defendant denied, that he knew of any lease granted to the plaintiff by *Eleanor Poor*, and said, that his father, between the twenty-ninth of September 1725 and the day of his death (the fifth of August 1727), had held *Alton Magna Farm*; that in the year 1726 he had kept and depastured sheep and lambs thereon; that he had shorn the sheep; that he had kept a few bees and pigeons; but that he knew not of any furze cut or sold. He admitted assets; that he had held the said farm since his father's death; that in the years 1727 and 1728 he had kept ewes, had lambs fallen, and some bees swarmed; and he set forth the value of his honey, wax, pigs, pigeons, and furze; but he said, that the sheep he had fed on the said farm were only a few for manuring the corn field lands, which, the country being upland, were wintered at a great expence of hay, and the tithes of which he had paid to the plaintiff; that in 1727 and 1728 he sold ninety sheep in each year, and that, from shear time to the time of the sale, was about three months; that no tithes had been paid for the said sheep for the said time, nor had any ever been demanded; and that a farthing for every sheep is double the value of such tithe,

supposing

supposing it to be due ; that the lands in the bill mentioned, for which no tithes had ever been paid, formerly belonged to a free chapel vested in THE CROWN, and so continued till *James the First*, by his letters patents, in the fifth year of his reign, granted the same, with the tithes thereof, to *Sir W. Horwick* and *A. Ingram* ; that his landlord *R. Long*, and his ancestors, were entitled to, and that, under him, the defendant had enjoyed, the same tithe free ; and that no tithes were ever received or demanded ; that in the year 1727, the tithe of wool was set out ; that the plaintiff's agent put it in a place by itself in a barri ; that it there rotted ; and that he knew not either the quantity or the value thereof. He also said, that the customary time of paying the tithe lambs, either by composition or in kind, on the said farm and in the parish of *Figbelden*, was on *Saint Mark's Day* ; and that he had set out the tithe lambs for the year 1726, in number thirty, on the twenty-fifth of *April* 1727 ; that they were then weanable, or capable of living without their dams ; that some of them, he believed, did come back to his flock ; but that he knew not the number nor the value, they not being marked ; but believed they might be worth two shillings and sixpence each when tithed ; that his father had offered the plaintiff so much as a composition for them, but that he had refused it ; that no more was ever paid by any owner of the said farm, or other person in the said parish ; that when his father did not tithe lambs in kind, he paid two shillings and sixpence for each in lieu thereof ; and that that sum was oftener paid than the lambs were taken in kind. He further said, as to the tithes of lambs in the year 1727, that he and the plaintiff had, on *Saint Mark's Day* 1728, agreed to set them out ; that when eight were set out, the plaintiff refused to take them ; and that he thereupon turned them to his flock, and procured two indifferent persons of another parish to set out the whole tithe lambs (being twenty-seven), and sent them to the plaintiff's house, which he refused to receive, or to take any composition for them, though the defendant had offered it ; that the plaintiff shortly afterwards brought an action for the said eight lambs, and had a verdict with twenty shillings damages, which was two shillings and sixpence for each lamb. He also said, that he believed that most of the twenty-seven lambs returned to his flock ; but that not being marked, he knew them not, and therefore he could not tell the number, but he believed that they were worth two shillings and sixpence when tithed ; that they were all weanable ; and that when the plaintiff filed his bill, no tithe lambs were due for the year 1728. The defendant further stated, that there was a *common of pasture* for sixty sheep belonging to the yard lands ; that the said sixty sheep had always depastured promiscuously with the rest of the farm flock, and were never distinguished from the others ; that at shearing-time the wool of the said sheep, taken indiffe-

the wool thereof is worth 7s. 6d. rently,

POOR
against
SEYMOUR.

that the lands for which no tithes had been paid are tithe free, as having belonged to a free chapel vested in the crown ;

that in 1727 he set out the tithe wool, and the plaintiff refused to take it away ; that in 1726 he set out his tithe lambs on *Saint Mark's Day* ; that the plaintiff refused to receive them ; that they returned to his flock ; and that the value is 2s. 6d. each ;

that he set out the tithe lambs for 1727 on *St. Mark's Day* 1728 : that the plaintiff refused to take them ; that they also returned to the flock ; and that he had tendered to him the value ;

that there is a *common of pasture* belonging to the yard lands ;

that the tithe of

POOR
against
SEYMOUR.

that fourteen
lambs were a-
greed to be the
number bred on
the yard lands;

that in 1726 and
1727 he had no
lambs yeaned af-
ter *Saint Mark's*
Day, except by
accident;

that the other
inhabitants paid
or compounded
for tithe lambs
on *Saint Mark's*
Day;

that the wool of
the sheep fed on
the yard lands
was set out;

that sheep wintered
abroad were kept from
Lady Day to
Michaelmas;

that most lambs
were yeaned a-
bout *Candlemas*,
and were capable
of living without
the dams on *Saint*
Mark's Day;

that he had se-
ven flocks of
bees, but never
sold honey or
wax;

that he had paid
the tithes of ap-
ples;

that on *Saint*
Mark's Day
lambs were ge-
nerally eight
weeks old.

The plaintiff, by
a special replica-
tion, relinquish-
ed his claim for
tithes arising on
the yard lands
and common of
pasture.

rently, was always set aside, without paying tithe in respect of the said yard lands; and he said, that he believed the tithe of such wool was worth seven shillings and sixpence; that fourteen lambs were always allotted and agreed to be the number bred in respect of the said yard lands, for which no tithe was paid, but that, at the time of tithing, fourteen were indifferently severed from the rest, without paying the tithe thereof, which he believed was worth three shillings and sixpence a-year; that neither he nor his father in the said two years, had any lambs fallen after *Saint Mark's Day*, except by accident, and that it was usual to destroy them as not being worth breeding up; that his rams were always put to his ewes by or before *Michaelmas*; that other inhabitants paid or compounded for tithe lambs on *Saint Mark's Day*; and he set forth the number of lambs they had sold in the said years, and for what they had been sold. The defendant further said, as to tithe wool, that he believed in 1727 his father and the plaintiff's agent first set out fifty different fleeces of sheep unhorn in respect of the said yard lands, and then set out the full tithe wool of all the rest which were wintered in the said parish, and half tithes for such as were wintered abroad, having satisfied the other half year's tithe where such sheep were wintered; that the sheep so wintered abroad were sent away about a fortnight before *Michaelmas*, and kept till after *Lady Day*. He also said, that a lamb would live without its dam at a month old; that most of the lambs fell about *Candlemas*, being about seven weeks before *Saint Mark's Day*; and that he did not wean any of his own lambs, but that they ran with the flock till they were sold. He also said, that he kept seven hives of bees; that he sometimes took no honey; and that he never sold either honey or wax; that the plaintiff had yearly received the tithes of apples, and had never asked for the tithes of pigeons, of honey, or of wax. The defendant also said, that the plaintiff had always refused to accept tithe lambs when fit to live without ewes, for that his father had set them out on *Saint Mark's Day* in a fair manner, when they were nearly eight weeks old; that he knew nothing of any particular day for taking from or putting to ewes on *Alton Magna Farm*; that he had offered the plaintiff two shillings and sixpence for the tithe of each lamb, which was the utmost sum that had ever been paid; but that he had refused to accept the same; and that he, the defendant, could not tell the number of sheep his father had shorn on the said farm.

The plaintiff replied specially, and thereby said, that he would justify all matters contained in the bill, except for an account of the tithes arising on the yard lands, insisted on by the defendant's answer to be tithe free, together with the common of pasture for sixty sheep belonging to the said yards lands; and that as to any account or satisfaction for these tithes, he waived, by his replication, his demand thereto.

The

The defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and what could be alledged;

Poor
against
SEYMOUR.

THE COURT ordered the defendant to account for the value of the tithes of wool, lambs, pigs, honey, and wax, which had arisen on *Alton Magna Farm* during the time demanded by the bill, and not waived by the replication; and that as to all other matters and things, the bill should be dismissed (a), with costs. The deputy made his report; and on the twenty-sixth of January 1735, it was confirmed with costs.

The defendant ordered to account for the tithes of wool, lambs, pigs, honey, and wax.

The bill dismissed as to the other demands.

JA. REYNOLDS.

LAW. CARTER.

WM. THOMSON.

(a) The tithes, therefore, for the depasturing of the sheep from the time they were shorn until they were sold were not decreed; THE COURT, as

Mr. Bunbury reports, being of opinion, that no tithe herbage shall be paid for such sheep, they being *animalia fructuosa*. S. C. Bunb. 313.

SIDNEY against BATE.

Kent, 27th January 1731.

HILARY TERM
5. GEO. 2.

THE bill, which was filed by the landholders of the parish of *Wareborne*, in the county of *Kent*, to establish certain *modus*es or customary payments in lieu of tithe hay, pasture, and all other small tithes arising therein (except the tithes of hops, hemp, and flax), stated, that the defendant had been seven years rector of the parish, but that no tithes in kind had ever been paid to him, or to any other rector in the memory of man, for any small tithes whatsoever, except as aforesaid. The bill then proceeded to state, that all the lands within the parish were distinguished by the appellation of *Marsh Lands* and *Uplands*; that the *Marsh Lands* were so called, because the occupiers thereof had, as often as there had been occasion, paid a proportionable scot or sum of money, in respect of such lands, for the draining the marshes and repairing the sea walls and banks; that the *Uplands* were all such lands for which no scot had been paid; that the occupiers of the *Marsh Lands* within the parish had immemorially paid, on *Michaelmas Day* yearly, to the rectors of the parish, one shilling an acre, and no more, for every acre of *Marsh Land* in their respective possessions (except when the same had been sown with corn, grain, hemp, or flax, or planted with hops), as a *modus* in lieu of the tithes of hay, pasture, and of all small tithes arising thereon (except of hemp, flax, and hops); and so after that rate for a greater or less quantity than an acre; that the said sum of one shilling an acre had been, time out of mind, accepted by the rectors, as a *modus* in lieu of the tithes of hay, pasture, and all small tithes whatsoever, arising on the said

The landholders of *Wareborne*, in *Kent*, file their bill to establish two *modus*es in lieu of the tithes of hay, pasture, and all other small tithes, except of hops, hemp, and flax; and state, that the lands are divided into *Marsh Lands* and *Uplands*;

that there is a *modus* of 1s. an acre, payable on *Michaelmas Day*, for the *Marsh Lands*, except when sowed with grain;

SIGNED

against

BATE

and another mo-
dur of 4d. an
acre yearly for
the Uplands;

marsh lands within the said parish, except as aforesaid. The bill also stated, that the occupiers of *Uplands* had immemorially paid for the said tithes fourpence an acre, except as aforesaid; and that the plaintiffs were willing, and had offered to pay the said sums. It also stated, that the defendant, with a view to destroy the said ancient *modus*, and to have tithes in kind, had filed a bill in this court against *Howland* (a) and the present plaintiffs, to oblige them to account for the tithes in kind; that the defendants put in an answer; that witnesses were examined, the cause heard, and issues directed to try the *modus* of one shilling and fourpence, as insisted on by the defendants in their answers; and that a verdict was given for the defendants, and the bill dismissed, with costs both at law and in equity; but that the rector, the further to perplex them, preferred another bill in this court in *Easter Term* last (b) in order to destroy the said *modus*. The bill therefore prayed that the *modus* might be established.

The defendant
denies the exist-
ence of the *mo-*
du.

The defendant admitted that the plaintiffs lived in the parish, and were seised of lands in fee, as stated in the bill; but he denied that he had ever heard, save by persons interested therein, that the said *modus* had been paid in lieu of the tithes in the bill mentioned, or for any other tithes whatsoever. He also admitted, that his predecessors had accepted the *modus*; that he had been rector for nine years past; that no tithes in kind had ever been paid in the memory of man, except of corn, hemp, flax, and hops; that all the lands in the rectory were distinguished by the appellation of *Marsh Lands* and *Uplands*; and that he had proceeded to compel the plaintiffs to pay him tithes in kind, as stated in the bill. He also stated, that he had heard that *Judge Eyre* declared, that in case the matters alledged in his bills could be proved, they would destroy the *modus*; that he had thereupon produced a survey of the rectory, which was taken in the twenty-sixth year of *Henry the Eighth*, remaining in the first fruits office; but that the Judge was of opinion, that the survey was not evidence, as the commission on which it was taken was not in court; that he proposed to the then defendants to withdraw a juror; and that, as they refused so to do, a verdict was given for the defendants, and his bill was dismissed; and that, at the same time, a cross bill which was exhibited by the defendants was also dismissed; that he thereupon preferred another bill; and that the present plaintiffs offered to pay him according to the *modus*; that he agreed to accept the same, but refused to have the *modus* established by a decree of the court.

The cause heard;
and the *modus*
established.

The plaintiffs replied; and the defendants rejoined; and on hearing counsel on both sides; and reading the depositions in a former cause, pursuant to order; and also the *posse*;

(a) See ante, page 210.

(b) See ante, page 257.

THE COURT ordered the several *modus*es insisted on in the said bill to be established, without costs on either side.

SIDNEY
against
BATE.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

COOK *against* TURNER.

EASTER TERM,
5. GEO. 2.

Derbyshire, 27th April 1732.

THE rector of *Barleborough*, in the county of *Derby*, claimed all tithes, both great and small, arising therein.

The estate formerly called *Langford Park*, but now called *Park Hall Lands*, in the parish of *Barleborough*, in *Derbyshire*, pays a *modus* of 8*l.* on every *Lady Day*, to the rector of *Barleborough*, in lieu of the tithes thereof.

The defendant said, that the several messuages, mills, farms, and parcels of land she occupied in *Langford Park*, otherwise called *Park Hall Lands*, were of the value of two hundred pounds a-year; and insisted on a *modus* of eight pounds yearly payable to the rector at *Lady Day*, or as soon after as demanded, in lieu of all tithes yearly arising or renewing upon the said estate.

On reading the depositions; and a receipt, dated the thirtieth of September 1677, to *Mr. F. Pool*, for eight pounds, as a *modus* for that year's tithes within the parish of *Barleborough*, beginning at *Lady Day* then last, and signed *John Brocklehurst*, rector; and on full debate had;

THE COURT declared, that the defendant had fully proved the *modus* insisted on by her answer; and thereupon ordered the bill to be dismissed with costs.

JA. REYNOLDS,
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

WRAGG *against* WHALLEY.

EASTER TERM,
5. GEO. 2.

Leicestershire, 15th May 1732.

THE plaintiff, as rector and patron of the rectory of *Galby*, in the county of *Leicester*, stated, that soon after the death of his father, his predecessor, on the sixteenth of October 1727, he was inducted into the said rectory, and became entitled to the revenues and profits thereof, and particularly to a certain pension of two marks and a half, issuing out of the rectory of *Norton* by *Galby*, and payable at *Easter* yearly; that his predecessors, in right of the said rectory, had been entitled to a mansion-house, with certain out-houses and buildings, and to a yard, gardens, orchards, a home close of about two acres, and, for time out of mind, to divers other parcels of land and common in the fields

The rector of *Galby*, in *Leicestershire*, claims a pension of two marks and a half yearly, at *Easter*, out of the rectory of *Norton*; and also certain houses and glebe lands and rights of way in the common fields of *Norton*.

See vol. i. p. 23.

WRACE
against
WHALLEY.

stating, that in the year 1614 the open fields of *Galby* and *Norton* were inclosed ;

and that twenty-nine acres of land in *Norton Fields* were allotted to the rector of *Galby*; and also 15l. 12s. 8d; and the two *Pike Closes*, in lieu of other inclosures.

The defendant, as impropriator of *Norton*, denies that the plaintiff is entitled to the *pension*,

or to any tithes whatever in *Norton*;

and says, that the 15l. 12s. 8d. and the two *Pike Closes*, in *Norton*, were given to the rector of *Galby* in lieu of the tithes,

and precincts of *Galby* and *Norton* for all manner of cattle, and to have and use a free and uncontroled liberty, way, or passage, to and from each and every piece and parcel of the said field lands, for themselves, their servants, their horses, carts, and carriages, to stock, dress, sow, plough, and manure, and to bring home the crops therefrom; that his father, for all the time that he was rector, was well entitled to the said pension, and had power to demise the same to him; that he is now become entitled to the profits of the said rectory since his death, and so to the said *glebe lands*, and to the tithes and dues in the said parish, or to some payment in lieu thereof; that, for time beyond memory of man, all the said fields in *Galby* and *Norton* were common and open until 1614; that about that time they were inclosed and allotted; that two allotments were then made to the then rector, one in *Galby*, next to the *Home Close*, of about thirteen acres, called *the Parsonage Home Close*, for the use of the rectors, in lieu of their *glebe lands* in *Galby Fields*; and the other in *Norton*, twenty-nine acres, called *Galby Parsonage Close*, in lieu of the *glebe lands* in *Norton Fields*; that the defendant's grandfather and the then rector came to some agreement for the payment of fifteen pounds, twelve shillings, and eightpence, in lieu of the tithes of the other inclosed grounds, as named in the bill; and that the two *Pike Closes* were allotted in lieu of the tithes of the other part of the said inclosures. The bill therefore prayed a full discovery, and relief in the premises.

The defendants answered; and the defendant *Whalley* admitted, that the plaintiff was rector, as in the bill stated, and entitled to the tithes thereof; but denied that he was entitled to the *pension*. He said, that he believed the plaintiff was entitled to the mansion-house, &c. as stated in the bill, and had a right of way before the inclosures; but he insisted, that he and his ancestors had, for two hundred years past, been, and that he now is seised of the rectory of *Norton*, and of the advowson of the vicarage of *Norton*, and the impropriate tithes thereof; and he denied that the vicar there had a right to any kind of tithes whatever; the dues belonging to the said vicarage consisting only in certain pecuniary payments. He further stated, that the *Pike Closes* belonged to the church of *Galby*, and had been, time out of mind, enjoyed by the plaintiff's predecessors, in lieu of the tithes of his lands in *Galby*; and that as the said *Pike Closes* are, by indentures of the fifth and sixth of *January* 1699, declared to be a *modus* or composition for such his said lands, he apprehended the same to be a good *modus* or composition for the tithes of those lands; and therefore did, and still does, refuse to pay the same; and he said, that the rectors of *Galby*, for time beyond memory, had not only enjoyed the said *Pike Closes* in lieu of the tithes of such his said lands, but also a money payment of fifteen pounds, twelve shillings, and eight-

pence, in lieu of the tithes of the rest of his the defendant's lands in *Galby*, as in the bill is mentioned.

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against
WHALLEY.

The other defendants put in their answers.

The plaintiff replied to the defendants *Whalley*, *Warner*, and *Dalby*; and they rejoined; and witnesses were examined on their behalf as well as on the plaintiffs; and the cause came on to be heard; and upon hearing counsel for all parties; and reading several proofs in the cause; and an indenture, signed *W. Whalley*, dated the sixth of *January*, in the eleventh year of *William the Third*; and on full debate;

The cause
heard.

THE COURT ordered the injunction formerly granted in this cause to be dissolved; and the bill to be dismissed with costs.

The bill dismiss-
ed.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

FARRINGTON against HALL.

Northumberland, 12th June 1732.

TRIN. TERM,
6. GEO. 2.

THE rector of *Elfdon*, in the county of *Northumberland*, claimed tithes, both great and small, *Easter* offerings, and other ecclesiastical duties, and also all monies and things which, by custom or *modus*, were payable to him as rector thereof.

The rector of *Elfdon*, in *Northumberland*, is only entitled to a *modus* of 10s. yearly, at *Easter*, in lieu of the tithes of all corn, grain, hay, and herbage, arising in the village of *Otterburne*, in the said parish; but he is entitled to the tithes arising on the farms and lands called *Kellyburn*, the *Overacres*, the *Flatt*, *Colwell Hill*, *Spithophead*, *Spithopbough*, the *Blakeup*, *Hall's Farm*, *Eabefwood*, *Brown's Town*, *Cattelbop*, *Trougberd*, *Lumsden*, and *Silloans*, in kind.

The defendants admitted that the plaintiff was rector of *Elfdon*, and insisted on the following *moduses*, in lieu of all the tithes of corn and hay, and of and for the depasturage of barren and unprofitable cattle arising on the several lands named in the answer; and that no tithe in kind had ever been paid for the same in the memory of man to the rector or to any to other person.

The defendant *G. Hall* said, that for ten years past he had been seised of the village, hamlet, or grange, called *Otterburn*, and insisted that a *modus* of ten shillings a-year was payable at *Easter*, for the tithes of all corn, grain, hay, and herbage for the said lands; and for *Kellyburn Farm* and a parcel of ground called *Catcleugh*, part of the said farm, one shilling, as the like *modus*. He also said, that he was seised of lands, called *Spithophead*, *Spithopbough*, *Babefwood*, and *Silloans*; and that, for the lands called *Overacres*, and *Spithophead* and *Spithopbough*, parcel of *Overacres*, the tenements called the *Flatt* and *Colwell Hill*, the sum of thirteen shillings and twopence was payable yearly, as a *modus* for all tithes as aforesaid, viz. by the tenants or occupiers of *Overacres*, ten shillings; of the *Flatt*, eightpence; and of *Colwell Hill*, two shillings and sixpence; and also at *Easter* yearly, for the

FARRINGTON
against
HALL.

the lands called *Blakeup*, *Hall's Farm*, and *Babeswood*, part of the said farms, two shillings and eightpence as a *modus*, viz. for *Blakeup*, one shilling, for *Hall's Farm*, one shilling and eightpence; and for *Hedley's Farm*, in *Lansbetts*, sixpence as a *modus*; and he said, that the parcel of land called *Silloans* is lying within the village or township called *Silloans*.

The defendant *D. Hall* said, that he was seised of lands in the parish, called *Cattlehope* and *Hatherwick*, otherwise *Brownstonon*; that there had been paid yearly at *Easter* as afore-said, by the tenants or occupiers of *Hatherwick*, otherwise *Brown's Town*, twelve shillings, as a *modus* in lieu of all tithes of corn, grain, hay, and herbage, for depasturing barren and unprofitable cattle upon the said lands, called *Hatherwick* and *Cattlehope*.

The other defendants said, that they had been seised of several parcels of lands and tenements, called *Lumsden*, in the township of *Troughand*, in the parish of *Elfdon*; and that there is payable, at *Easter* yearly, nine shillings and sevenpence for the said lands, as a *modus* in lieu of the tithes of corn, grain, hay, and herbage thereof.

All the defendants averred, that the said several *moduses* had been, for several years, tendered and paid to the plaintiff, and accepted by him and his predecessors; and that no tithe of corn in kind had ever been paid.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and reading proofs in the cause;

THE COURT ordered *G. Hall* to account for the several titheable matters arising on the lands called *Silloans*.

An issue was directed to try the several *moduses* set forth in the answers (except the *modus* for the lands called *Silloan's* and *Hedley's Farm*.) Costs and further directions to be reserved. And the jury found a verdict for the defendants; but a new trial was granted upon the Judge's certificate. Before the trial was had, the defendant *G. Hall* died, and a *bill of revivor* was filed, and the former proceedings were revived; and by an order of court, dated the eighth of *June* 1732, the issues were altered, and ordered to be tried before a special jury.

The trial was had pursuant to the said orders, and a verdict found for the plaintiff, viz.

As to THE FIRST ISSUE, that there is not, nor ever had been, a *modus* of tithing as to the farm called *Kellyburn*.

As to THE SECOND ISSUE, that there is not, nor ever had been, a *modus* of tithing as to the lands called *Overacres*, the *Flatt*, and *Colewell Hill*, or as to the lands called *Spithopehead* and *Spithopehaugh*, parcel of the lands called *Overacres*, or as to the *Flatt*, and *Colewell Hill*.

As

As to THE THIRD ISSUE, that there is not, nor ever had been, a *modus* for tithing as to the lands called *Blakeup*, *Hall's Farm*, or *Babeswood*, as parcel of the lands called *Blakeup* and *Hall's Farm*.

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against
HALL.

As to THE FOURTH ISSUE, that there is not, nor ever had been, a *modus* of tithing as to the lands called *Hatherwick*, otherwise *Brown's Town*, and *Cattlebope*, as parcel of the lands called *Hatherwick*, otherwise *Brown's Town*.

As to THE FIFTH ISSUE, that there is not, nor ever had been, a *modus* of tithing as to the village called *Troughard*, and the lands called *Lumsden*, as part of the village called *Troughard*.

As to THE LAST ISSUE, that there is, and immemorially had been, a *modus* of tithing as to the village, hamlet, or grange, called *Otterburn*, and the lands thereunto belonging, as in the pleadings is alleged.

THE COURT, upon hearing counsel on both sides, ordered all the defendants to account for all the tithes demanded by the bill (a) (except for the tithes of *Otterburn*), with costs both at law and in equity, except as to *Otterburn*; and that so much of the bill as related to the tithes of *Otterburn* be dismissed, with costs at law and in equity.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
W. THOMSON.

(a) The rector of *Elfdon*, in Hilary Term, 1. Geo. 2. filed his bill in this court for the tithes of the several farms and places mentioned in the present case, excepting *Otterburne*; and also for certain other lands, called *Bishopbead*,

the *Sallows*, and *Cattlebough*. The defendants insisted on several farm *moduses* for the same. But THE COURT, on hearing the evidence on both sides, decreed the defendants to account for the tithes demanded by the bill.

GOODWIN, D. D. against WORTLEY; et à Contra,
Yorkshire, 6th December 1732.

MICH. TERM,
6. GEO. 2.

THE rector of *Tankersley*, in the county of *York*, stated, that his predecessor had died in September 1715, and that he was inducted into the said rectory, and become entitled to all the tithes thereof, both great and small, in kind; that *Sidney Wortley* was, for several years, owner of *Warncliffe Wood*; that the said *Sidney Wortley* died in the year 1727, and left the defendant *John Wortley* his heir; that the said *John Wortley* had enjoyed the said wood since his ancestor's decease; that the said *Sidney Wortley* had, during his life-time, cut down certain quantities of wood, and made the same into charcoal, and sold a great part thereof; and that the defendant had, since the death of *Sidney Wortley*, done the same; that the said *Sidney Wortley* was also,

The rector of *Tankersley*, in *Yorkshire*, claims the tithes of *Warncliffe Wood*, of *Greenspring Wood*, of *Etberley Spring*, of *Archedale Spring*, of *Tewtree Flat*, of *Pond Flat*, of *Low Flat*, of *Lane Rboys*, of *Lodge Ley*, and of *Wortley Mill*.

GOODWIN
against
WORTLEY;
et c. Contra.

also, during his life, owner of *Green Spring Wood* and *Ethersley Spring Wood*, and in the year 1716 had felled the same, and converted the produce thereof into charcoal; and that the defendant *J. Wortley* is now owner of the said woods. The bill also stated, that the defendant *Broadbent*, in the years 1720 and 1721, enjoyed *Archdale Spring*, and cut down the wood thereof, and made the same into charcoal; that the said *Broadbent* also had several closes in *Wortley*, called *Yewtree Flat*, *Pond Flat*, *Low Flat*, *Lane Rhyod*, and two closes, called *Lodge Leys*; and that he had reaped and gathered corn and grain therefrom, and converted the tithes thereof to his own use. The bill further stated, that the defendant *Mathewman* occupied a water corn mill, called *Wortley Mill*, at which he had ground corn and other grain; and had not paid the tithes thereof. It also stated, that all the said estates were, and now are the estates of the defendant *John Wortley*; and that the tithes of the said wood, and the bark when stripped from the wood, and of the corn and grain of the said lands, and of the corn ground at the said mill, ought to have been set forth in kind, or some satisfaction made to the plaintiff for the same. The bill therefore prayed, that the executors of *Sidney Wortley* might admit *assets*, and that the defendants might account for their tithes.

The defendants say, that there is a *modus* of 1s. 8d. a-year, payable at *Easter*, in lieu of the tithes of all wood lands lying within the manor of *Wortley*;

The defendant *John Wortley* admitted that the plaintiff was rector of the parish; that his father was owner of *Warndcliffe*, *Green Spring*, and *Ethersley Spring Woods* till his death; that he, the defendant, had since enjoyed the same; that they had cut quantities of wood, and converted part into charcoal, and sold the rest; and that he had paid no tithes for any of the premises in his occupation; but he insisted, that the plaintiff was not entitled to tithes in kind, or to any thing in satisfaction for the same. He said, that the mill had been built time out of mind; but he admitted, that two pair of mill stones had been lately added thereto. He also said, that the *Old Park* had not been made within the memory of man; and that it was disparked in the reign of *Charles the First*. He also said, that there was, and had been immemorially payable, at *Easter* yearly, to the rector of *Tankersley*, in satisfaction of the tithes of the wood land, the following *modus*, viz. for all woodlands lying in the manor of *Wortley*, in the said parish, one shilling and eightpence; and that the said *modus* had been accepted by the former rectors, but not by the plaintiff.

that the said *modus* is payable in lieu of all tithes arising on the demesne lands of the said manor;

The defendants *Jessopp* and *Capper*, the executors of *Sidney Wortley*, admitted that the plaintiff was rector, and that *S. Wortley* was owner of the said woods, and had cut wood therein, and converted the same into charcoal; and they insisted on the said *modus* of one shilling and eightpence; and said, that they were willing to pay all the arrears thereof. They also averred, that their testator *S. Wortley* had always insisted, that the said *modus*,
and

and those hereafter mentioned, had been paid to and accepted by all the rectors, in lieu of all tithes of the *Demesne Lands* belonging to *Wortley Hall*, and of the mulcture of the *Mill*, and of the *Old Park*; and they admitted assents.

GOODWIN
against
WORTLEY;
et 2 Contra.

The defendant *Broadbent* admitted, that he was seised in fee of *Archdale Spring Wood*, and that he had sold the cutting thereof, which was converted into charcoal; that he had occupied *Yewtree Flat*, *Pond Flat*, and *Cow Flat*, for five years past, and had annually ploughed and sowed part thereof; and he insisted, that a *modus* of one pound, six shillings, and eightpence, was payable yearly at *Lammas* for that part of the lands called the *Park*, on the south side of *Pilley Brook*, except one piece taken from *Hermit Hill*, now divided into two pieces; that another *modus* of one shilling and eightpence was payable as aforesaid, for all woods within the manor of *Wortley*; and that another *modus* of one shilling a-year, was payable as aforesaid, for the demesnes of the manor of *Wortley*; and he averred, that they had been received by the plaintiff's predecessors, and that he had tendered them to the plaintiff.

that there is a
modus of 1l. 6s.
8d. payable yearly
at *Lammas*, in
lieu of the tithes
of the *Park* to the
south of *Pilley
Brook*,

and 1s. for the
demesnes of the
manor;

The defendant *Wilkinson* admitted, that he had occupied *Lodge Leys* for eight years, and had sown the same yearly; and insisted, that the plaintiff was only entitled to the like *modus*es in lieu of tithes in kind.

that there are
the like *modus*es
for *Lodge Leys*;

The defendant *Mathewman* admitted, that he had occupied the mill for eleven years; and said, that he believed it was an ancient mill; and insisted on a *modus* of two shillings, payable at *Lammas*, in lieu of tithes in kind of all grain ground at the said mill.

that there is a
modus of 2d. for
Wortley Mill.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

The defendants filed their *cross bill* against the plaintiff to establish the said *modus*es.

The defendants
file a *cross bill*
to establish the
*modus*es.

The rector, in answer to the *cross bill*, denied that a *modus* of one shilling and eightpence was payable for the said lands, or that the same had ever been accepted by his predecessors; and he said, that though there might be, he did not know that there was a *modus* for *Wortley Mill*; but he denied that it was an ancient mill. He also said, that he had been rector of the parish from the year 1715; that tithes in kind were due to him of common right; that he had no ancient deeds whatsoever relating to the said *modus*es; that he had not received any tithes in kind for the said premises; that such tithes had been formerly paid; that he had constantly received money from *Sidney Wortley* for the tithes of wool, lambs, and sheep depastured in *Warncliffe Woods*; that the said

The rector de-
nies the *modus*es.

Sidney

GOODWIN
against
WORTLEY;
et c. Contra.

Sidney Wortley had, until 1725, paid him six pounds a-year for all tithes in *Warncliffe*, except wood; that he had received the same sum from *J. Wortley* for the tithes of one year after his father's death; that he had ever since received the tithe of corn reaped in the *New Park* in *Warncliffe*; and he denied that the said *modus* of one shilling and eightpence was payable for the tithes of woodland, or that two shillings a-year were payable for tithe grist of *Wortley Mill*, or that it was an ancient mill.

The plaintiffs replied in both causes, and the defendants rejoined; and they came on to be heard; and counsel were heard on both sides.

The Court refuse to let the depositions taken in the original cause to be read in the cross cause.

During the hearing, the defendant's counsel produced an order, dated the fourth of *February* 1731; and another of the twenty-third of *October* 1732; whereby it was ordered, "that the depositions taken in one cause might be read in the other."

The plaintiff's counsel objected to the reading of the proofs taken in the original cause in the cross cause.

THE COURT allowed the objection.

The Court refuse to let depositions be read as to the *modus* for the *Mill*, they being blended as to the other *moduses*.

Upon reading, on behalf of the defendants in the original cause, the depositions of *W. Swinden*, *T. Archdale*, and *G. Phipps*, to their cross examination, and also on proposing to read the original examination as to the *moduses* for the *Mill* and the *Woodlands*.

The plaintiff's counsel objected to the deposition upon the original examination being read, because the interrogatories included questions as to the other *moduses*, as well as to those which related to the *Mill* and the *Woodlands*; and

THE COURT would not allow the same to be read.

Objection to one of the witnesses depositions being read, on the ground of interest over-ruled.

The plaintiff also objected to the third, fourth, sixth, and ninth interrogatories, because the deponent was interested and concerned; and this objection was likewise allowed; so that the answer to the second interrogatory only was read.

The several depositions of other witnesses for the defendants were then read; but on proposing to read that of *M. Northall*, the plaintiff's counsel objected to it; but on reading his cross examination, the objection was over-ruled, and his deposition was read on behalf of the defendants, as was also that of several other witnesses.

There were also read several receipts, beginning the nineteenth of *September* 1684 and ending the sixth of *September* 1712; several entries for money paid; an indenture dated the first of *June* 1566, and signed *J. Gargram* and *F. Wortley*; and

and another of the sixteenth of *November*, in the first year of *Charles the First*; and other proofs.

GOODWIN
against
WORTLEY;
et c. Contra.
Issues directed
to try,

THE COURT, by consent of all parties, directed a trial at law upon the following issues :

FIRST, Whether the sum of one shilling and eightpence by the year has, for time whereof the memory of man is not to the contrary, been due and payable at the feast of *Easter* yearly to the rector of *Tankersley* for the time being, as a *modus in lieu* and satisfaction of the tithes happening, renewing, and increasing out of all the woodlands lying within the manor of *Wortley*.

Whether 18 8d.
are payable at
Easter, in lieu of
the tithes of
wood in the ma-
nor of *Wortley*.

SECONDLY, Whether the sum of one pound, six shillings, and eightpence by the year has been due and payable, at *Lammas* yearly, to the rector, as a *modus* for all tithes arising out of the lands called *the Park*, on the south side of *Pilley Brook*, in the said parish, except a piece taken from *Hermit Hill*, now divided into two pieces.

Whether 11. 6s.
8d. are payable
for *the Park*.

THIRDLY, Whether the sum of one shilling by the year has been due and payable, at *Lammas* yearly, to the rector, as a *modus* for all tithes arising out of *the Demesnes* or demesnes lands of the manor of *Wortley*.

Whether 1s. is
payable at *Lam-*
mas for *the De-*
mesnes.

FOURTHLY, Whether a sum of two shillings has by the year been due and payable at *Lammas* yearly to the rector, in lieu and satisfaction of tithes in kind for all corn and grain ground at *Wortley Mill*.

Whether 2s. are
payable for *the*
Mill.

To be tried by a special jury; and a view to be had of the lands and premises in question by six or more of the jury at the equal charge of the plaintiff and defendants, and all deeds, &c. to be produced.

The jury to have
a view.

By consent of the executors of *Sidney Wortley*, they were (agreeable to the tender made in their answers) ordered to pay the sum of eleven pounds to the plaintiff for the tithes of *Ether-ley Spring Woods*, with costs.

The tithes of *E-*
thersley Spring
decreed.

The said trial being had, the causes came on upon the decree and *posita* for further directions; when, upon reading the same, it appeared, the jury had found a verdict for the defendants on all the issues, adding only the following words to the last issue, "and
" that anciently *the Mill* aforesaid had two pair of stones, and
" no more, and that there hath been added to the said mill one
" pair of stones, which are carried by the same frame and wheels
" which carried the former stones; but that the said mill can
" work only two pair of stones at one time."

The jury find a
verdict on all
the issues for the
defendants;
and that a pair
of stones has
been added to
the mill.

THE COURT, on hearing counsel, ordered the *original bill* to be dismissed as to all matters (except as to the eleven pounds ordered

The original bill
dismissed with
costs.

GOODWIN
against
WORTLEY;
et c. Contra.

The *modus* as to the Park, the Demesnes, and the Mill, established.

The defendants to pay costs as to the wood land, the *modus* being stated as payable at *Lammas* instead of *Easter*.

The cross bill dismissed without costs, there being a *modus* of 2s. 8d. for the wood lands, tho' the time when payable was misstated.

ordered to be paid by the executors), with costs both at law and in equity; that the *modus*es found upon the second, third, and fourth issues, viz. one pound, six shillings, and eightpence; one shilling; and two shillings, be established, and paid by the plaintiffs and all other the occupiers of the premises, at *Lammas* yearly, in every year, to the rector of *Tankersley*; that the said *Goodwin* do pay to the plaintiffs their costs in the cross cause; except as to the matters and things contained therein relating to the *modus* payable at *Lammas* for all the wood lands lying in the manor of *Wortley*, the jury having found the same to be due and payable at *Easter*; and that the cross bill be dismissed without costs, it appearing by THE POSTEA, that there is a *modus* of one shilling and eightpence due and payable for all the said wood lands lying in the manor of *Wortley* to the rector of *Tankersley*; but that the *modus* is payable at *Easter* yearly, and not at *Lammas*, as set forth in the cross bill.

JA. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

EASTER TERM
6. GEO. 2.

BURTON against SPENCER.

Derbyshire, 30th April 1733.

The vicar of *Hathersage*, in *Derbyshire*, is entitled to gd. a load, of nine dishes, of all lead ore got from the mines called *Pasture Groves* and *Benjamin's Grove*, in the manor of *Stoney Middleton*, in the said parish.

THE vicar of *Hathersage*, in the county of *Derby*, claimed, by endowment or prescription, all dues and small tithes arising within the parish, and the liberties and precincts of the same; and stated, that the manor, town, or hamlet of *Stoney Middleton*, thereto adjoining, was part of the said vicarage; that mines had been found therein; that he was entitled to tithes in kind for the lead ore got therefrom; and that the customary tithe of lead ore, when received in kind, had always been every tenth dish or measure of the ore cleaned and dressed, or some composition for the same, as they could agree with the miners and owners; and that ninepence a load, each load holding nine dishes, had generally been paid in lieu thereof; that the vicarage, by the records of the twenty-sixth year of *Henry the Eighth*, stands rated at seven pounds; that the tithes of the ore are computed at four pounds a-year; that in consideration of the said tithes he and his predecessors had, time out of mind, been engaged to pay seven nobles a-year to a curate to perform duty at a chapel in *Stoney Middleton*; and that he had duly paid the same; that, by indenture of the seventeenth of January 1623, between *E. Harrop*, clerk, then vicar of *Hathersage*, and *T. Bray* and others, the said vicar, in consideration of the yearly rent of twenty pounds, demised to them, for a certain number of years, "all the tithes of lead ore that should be got within the said manor of *Stoney Middleton*;" that the lessees did, without interruption,

BURTON
against
SPENCER.

interruption, collect and receive, from time to time, the tenth dish of lead ore that was gotten within the said manor; that the said tithe had been constantly paid to the plaintiff's predecessors, or some composition made for the same, until lately; and that the defendants had discovered mines of lead in the said manor in lands called *the Pasture* and *Bennison's Grove*, and had got thereout ore, without setting out the tithes thereof, or making any composition for the same.

The defendants said, that *Stoney Middleton*, and the mines called *Pasture Grove* and *Bennison's Grove* were within the vicarage, and that the plaintiff and his predecessors were entitled to all the small tithes of *Hatherfage*, excepting the tithes of wool and lambs, which belonged to the *Duke of Devonshire*; but they denied that he had any right to the tithe of lead ore got within the said parish, or to any thing in lieu thereof. They also said, that the manor of *Stoney Middleton* is a member of the said vicarage, and that there is a curacy therein; but they denied that the plaintiff, or his predecessors, had, time out of mind, or at any time, received tithes in kind of lead ore got in any mines within the said vicarage; or that there was any customary or usual tithe ore due therein, or at least within the manor; or that tithe ore had been received in specie; or that every tenth dish or measure of lead ore, clean dressed, was paid or due for such tithe of lead ore within the said parish; or that any composition had been made for the tithe of lead ore, or any thing paid in lieu thereof, as stated in the bill; and they set forth several reasons in their answers why not.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading a decree of this court, made the tenth of February 1661, in the thirteenth year of *Charles the Second* (a); and on full debate, THE COURT directed a trial at law against

(a) This was the case of *Kelfall v. Mason* and others. The plaintiff was vicar of *Hatherfage*, upon the presentation of the *Earl of Devonshire*, and claimed all the small tithes arising within the manor of *Stoney Middleton*, particularly the tithes in kind of all the lead ore got within the said manor and vicarage. The defendants appeared, answered, and attended the hearing of the cause. It appeared by the exemplification of a record of 26. Hen. 8. that the tithes of the said lead ore belonged to the vicar of *Hatherfage*; that they then amounted to four pounds, three shillings, and fourpence a-year; and, by the depositions of several ancient witnesses, that they had been regularly paid for fifty years until the then late troubles. The Court took time to consider of the matter, and the question was argued a second time at the bar, when it was

ordered, with the consent of the defendants, that on their paying sixty pounds to the vicar, an action should be brought by the vicar against four of the now defendants, and tried at the bar of the court, by a jury from *Derbyshire*, exclusive of merchants and miners, on an issue, "whether the tithes of lead ore within the parish of *Hatherfage* are due to the vicar thereof;" that if the verdict should be found for the defendants, the plaintiff should repay to them the sixty pounds; but that if it should be found for the vicar, that then a decree should be made for the tithes of the said lead ore, as well for the arrears as for those in future accruing; and that a commission should issue to ascertain the same. But it does not appear that any further proceedings were had in the cause.

VOL. II.

Z

the

BUTON
against
SPENCER.

the defendants, who denied the custom as laid in the bill, upon two several issues, to wit,

FIRST, Whether the vicars of the said vicarage of *Hathersage* have, time out of mind, as often as any mine or mines have been found within the said parish, received or been entitled to tithes in kind for lead ore got therein, or to a composition for the same.

SECONDLY, Whether the usual and customary tithe of lead ore, when received in kind, has always been every tenth dish or measure of lead ore clean dressed.

THE COURT ordered the bill to be dismissed as against the defendant *Moreton* with costs, he being only bar-master and accountant.

The trial being had, the cause came on upon THE POSTEA; and upon reading the decree and *poslea*, and hearing counsel for the plaintiff;

THE COURT, on the twenty-first of *November* 1734, ordered the customary payment of ninepence a load of all lead ore got within the said vicarage of *Hathersage*, and found by the jury upon the said trial to have been immemorially paid as a composition for the tithe of the said lead ore to the vicars of the said vicarage, to be hereby established; and that the defendants do come to an account for the same at that rate, and pay the plaintiff his costs both at law and in equity.

EASTER TERM,
6. GEO. 2.

FOX against BARDWELL; et à Contra.

Norfolk, 16th April 1733.

The vicar of *Lakenham*, in *Norfolk*, claims all tithes, excepting the tithes of corn and grain, arising on the lands in the occupation of the defendants.

S.C. Comy. Rep.
498

S.C. Bunb. 327.

S.C. 2. Eq. Abr.

733.

S.C. 4. Bro. P.C.

216. 235.

THE vicar of *Lakenham*, in the county of the city of *Norwich*, claimed all tithes, except the tithes of corn and grain, which belong to the impropiator; and stated, that the defendant *Bardwell* had sown lands with turnips; that part of the turnips were, after the tenth of *October* and before the first of *June* following, severed from the ground, and sold or given out to cattle, and that the other part of the said turnips were eaten up as they grew by unprofitable cattle; that the defendant had also meadow and pasture land, on part of which she had kept and fed dry and unprofitable cattle, and had mowed the grass of the other part, and made the same into hay; and that she had, during the said time, other titheable things. The bill also stated, that the other defendants had, from the tenth day of *October* 1727 until the *Michaelmas* then next following, occupied meadow and pasture land; that they had depastured dry and unprofitable cattle on part of the said land, and had mowed the other part, and made the grass into hay, and carried the same away without paying any tithes, or making any satisfaction for the same.

The

The defendants answered, and said, that all the lands in the parish of *Lakenham* for which the plaintiff demanded tithes were parcel of *the demesne lands* of the *manor of Lakenham*; that the said manor and demesne lands, and the advowson of the church of *Lakenham* and rectory there, and of *Brakendell*, were heretofore parcel of the possessions of the dissolved priory of *Norwich*; that the said manor and demesne lands were, before and at the dissolution of the said priory, held, as well by the said prior and convent as by their farmers, tithe free; and that no tithes whatever in kind had ever been paid for the same before the dissolution of the said priory; that the said prior and convent from the year 1386 had provided a chaplain to officiate in the said church; that the said chaplain was usually one of their own house; that the said priory was, in the thirtieth year of *Henry the Eighth*, dissolved, and by the statute 31. *Hen. 8. c. 13.* became vested in THE CROWN; that the said manor and *the demesne lands*, as part of the possessions of the said priory, thereby became discharged from the payment of all tithes; and that they had been ever since so held; that after such dissolution, *Henry the Eighth*, by letters patents dated in the same year, changed the said priory and convent into a deanery and chapter, and granted to the dean and chapter thereof divers privileges, together with the said manor and demesnes; that the dean and chapter, by indenture, dated the second of *January*, in the thirty-third year of *Henry the Eighth*, demised to *R. Flint* the site of the said manor, and all the lands, foldages, and other things thereto belonging, and also certain lands assigned out of the *manor of Eaton* to the said *manor of Lakenham*, and one close in *Ameringhale* belonging to that manor (except *the Water Mills in Lakenham and Lakenham Wood*), to hold to him, &c. for ninety-nine years, at twenty-nine pounds a-year; that the said dean and chapter afterwards, by indenture, dated the first of *March*, in the first year of *Edward the Sixth*, demised to the said *R. Flint*, *Lakenham Wood*, at ten shillings *per annum*; and further declared, that the said manor had always been discharged in their hands, and in the hands of the farmers thereof, of and from the payment of all manner of tithes, as well predial as personal; and that the true meaning of the said lease was, that he should enjoy the said manor discharged of the payment of all tithes renewing on *the demesnes* of the said manor; that the said dean and chapter being so seised of the said manor and the *demesne lands* thereof, together with the rectory appropriate and advowson of the church of *Lakenham*, by indenture, dated the first of *June*, in the first year of *Edward the Sixth*, surrendered up the same, and all other their possessions, to the said king, who, by letters patents dated the ninth of *November* following, refunded and granted to them (amongst that he should hold *the Demesnes* tithe free; that the dean and chapter surrendered *the Demesnes* of the manor, and the advowson of the church of *Lakenham*, to *Edward the Sixth*; that the said king granted to them the rectories of *Lakenham* and *Brakendell*, with a reservation of *the Demesnes* of the manor;

For
against
BARDWELL;
et Contra.

The defendants say, that the lands of which the vicar demands the tithes were parcel of *the Demesnes* of the manor of *Lakenham*; that the said manor, together with the rectories of *Lakenham* and *Brakendell*, belonged to the priory of *Norwich*, and were held by the prior tithe free; that the prior provided a chaplain for the said church; that the said priory was dissolved by *Henry the Eighth*, and that the lands thereof were vested in the crown; that *Henry the Eighth* changed the priory into a deanery, and gave the dean and chapter the said *Demesnes* tithe free; that the dean and chapter demised the site of the manor, and also lands in *Eaton* and *Ameringhale*, except *Lakenham Wood* and *the Water Mill*, to *R. Flint*; that they afterwards demised *the Wood* to the said *Flint*; and declared that it was meant other

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against
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et 2 Contra.

that the said
king granted the
said manor and
the *Demesnes* to
T. Gresham tithe
free;

that the lands in
the defendant's
possession were
parcel thereof,
and came from
Gresham to Lord
Berkeley,
and have ever
since been held
tithe free.

other things) the rectories of *Lakenham* and *Brakendell*, and the advowson of the churches thereof, but reserved to him and his successors the said manor of *Lakenham*, and all the *demesne lands* thereto belonging in *Lakenham*, *Eaton*, and *Ameringhale*, then in the use of *R. Flint*; that the said king, by virtue of such reservation, being seised of the said manor and the *demesne lands* so freed from the payment of all tithes, by letters patents, dated the first of *July*, in the seventh year of his reign, granted to T. Gresham, and his heirs, &c. "all that the manor of *Lakenham* " and the *demesne lands*, &c. to hold, &c. as the said prior had held the same; that the lands in the occupation of the defendants were parcel of the *demesnes* of the manor of *Lakenham*, and were included in the said grants, and that by divers mesne conveyances the said manor, and the *demesnes* thereof, had become vested in the *Earl of Berkeley*; that at and ever since the dissolution of the said priory, until *Easter* 1699, the said manor, and the *demesne lands*, in *Lakenham*, had been held, by the several occupiers, discharged from the payment of all tithes in kind whatsoever, as fully as the said prior and convent had held the same; and that in like manner all the residue of the said *demesne lands*, in *Eaton* and *Ameringhale*, had been, and still are, held so discharged; and therefore they insisted that they were not liable to make the plaintiff any satisfaction for tithes arising on the said *demesne lands* belonging to the manor of *Lakenham* in their occupation. The defendants further stated, that the said dean and chapter, from their first foundation by *Henry the Eighth* until the year 1610, had constantly found a chaplain to officiate in the said parish as the late prior and convent had done, and had taken all tithes arising therein, except what belonged to the said manor and lands; that the said prior and convent in all their leases of the said rectory before the dissolution, and the said dean and chapter until the year 1610 and a long while after, expressly demised "all tithes of corn, hay, hemp, and flax, in the said " parish," and all other tithes there, but always expressly excepted thereout "all tithes belonging to the said manor of *Lakenham*." The defendants, therefore, hoped, that the decree, which had been made by consent of the parties, or any payments made, should not deprive them of the benefit of the said exemption.

The defendant
says, *hay* is not
a vicarial tithe.

The defendant *Bardwell* set forth what titheable matters she had, and the values thereof; but insisted, that *hay* was not to be considered as small tithes.

The other de-
fendants answer
in like manner.

The other defendants set forth the values of the tithes; but insisted, that the said lands being parcel of the *demesne* of the said manor were discharged from the payment of all tithes.

The

The plaintiff set forth, by his amended bill, that the vicarage of *Lakenham* is a very ancient vicarage; that there was a regular succession of vicars for many years before and until the year 1386; that there had been such regular succession ever since the year 1610; that although the prior and convent of *Norwich*, and the dean and chapter there were patrons of it, and ordinaries of the place, and also owners of the manor of *Lakenham*, and appropriators of the said parish, and did, for several years, suffer the same to lie vacant, and during such vacancy did let the vicarial tithes arising on the *demesnes* of the said manor, yet that they never demised the same while there was a vicarage regularly instituted, and particularly since the year 1610; and that their tenants had submitted to pay the vicarial tithes for the said year, and during the said leases, or had made some composition for the same; that *T. Ward*, formerly occupier of the *demesne lands*, refusing to pay tithes to *F. Folchier*, clerk, his, the plaintiff's, predecessor, the said *F. Folchier* filed a bill against the said *T. Ward*, demanding the said tithes, and obtained a decree for an account (a); that *J. Sherwood*, then tenant of the said vicarage under *P. Burrough*, clerk, vicar there, filed his bill also against *T. Ward* the son; and the Court decreed an account for tithes (b);

(a) This decree, in the case of *Folchier v. Ward*, is dated the 10th May 1699, in Easter Term, 11. Will. 3. The bill stated, that the plaintiff had been instituted vicar of *Lakenham* in the month of December 1692, and that he was thereby entitled to and demanded the tithes of hay, and all other tithes, excepting of corn and grain, which he admitted belonged to the impropiator, arising on the estate called *Lakenham Hall*, from the time of his institution. The defendant said, that the lands belonging to the said estate were the *demesnes* of the manor of *Lakenham*; that no tithes had ever been paid or demanded for the same; that he had heard that the said lands were formerly parcels of the possessions of some priory or religious house in *Norwich*, and came, by the dissolution of monasteries, to the crown; that *Edward the Sixth* granted the manor, rectory, and church of *Lakenham*, and the advowson, patronage, and vicarage of *Lakenham*, and several other messuages and lands in *Lakenham*, to *Thomas Gresham*; and that thereby, or by some more ancient composition, the said lands were discharged from the payment of tithes. — THE COURT, on reading the depositions and several ancient records, ordered the defendant to account for the tithes demanded by the bill, with costs. The defendant, hearing this opinion, proposed to pay the vicar eight pounds a year for the tithes of *Lakenham Hall*; to which the vicar assented, and the agreement was confirmed by *Mr. Chaplin*, the owner of

the estate, and made an order of the court by the consent of all the parties.

(b) This decree is dated the 24th February 1723, Hilary Term, 10. Geo. 1. The bill stated, that *P. Burrough* had been instituted into the vicarage of *Lakenham* in the year 1715; and by lease, dated the 20th of February 1715, had demised to the plaintiff the tithes thereof; and he demanded of the defendant, an infant, as administrator to his father, the tithes, except of corn and grain, of *Lakenham Hall*. The defendant appeared by his guardian; and insisted, that the lands thereof were parcel of the manor of *Lakenham*, and formerly the possessions of the cathedral church of *Norwich*, or some other religious house; that on the dissolution thereof, the manor, farm, and rectory, came to the crown; and thereby, or otherwise, were exempted from, or the owners entitled to the payment of the tithes thereof; that *Edward the Sixth* granted the manor, the rectory, and the advowson and patronage of the vicarage of *Lakenham*, to *Thomas Gresham*, and his heirs, &c. — THE COURT, on reading a copy of the grant from *Edward the Sixth* to *Gresham*, dated the first of July, in the seventh year of his reign; the proofs in the cause of *Folchier v. Ward*; and an inrollment of the charter of *Edward the Sixth*, granted in the first year of his reign to the dean and chapter of *Norwich*, ordered the defendant to account for the tithes demanded by the bill; and on the 15th of April 1725, the report thereon was confirmed.

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against
BARDWELL;
et c Contra.

The vicar files an amended bill, stating, that the vicarage was existing before the year 1386;

and that the prior, and dean and chapter were the owners thereof, and of the manor of *Lakenham*, and had let the *Demesnes*; but had not demised them since 1610;

that the occupiers of the *Demesnes* have been ordered to account;

that

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against
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et i Contra.

and that the vicarial tithes thereof have been constantly paid.

The defendants, in answer to the amended bill, say, that the tithes claimed arise on the *Demesnes* of the manor of *Lakenham*; that their other lands are parcel of the manor of *Eaton* and *Ameringhale*, all which had been parts of the priory before *Richard the Second*, and tithe free;

that the rectory of *Lakenham* was founded in the reign of *William Rufus*.

that the defendant *Bardwell's* husband became occupier of the said *demefne lands* in the year 1721, and readily paid the plaintiff all tithes thereon, except the tithes of corn and grain, until his death in the year 1727. The vicar therefore prayed the benefit of the former decrees.

The defendants, in their answer to the vicar's amended bill, insisted, that all the lands in *Lakenham* and the titheable places for which the vicar demanded tithes, were parcel of the *demefne lands* of the manor of *Lakenham*; that the other lands in their occupation were parcel of the several manors of *Eaton* and *Ameringhale*; that the said manors of *Eaton* and *Ameringhale*, and the *demefne lands* thereof, and the several churches of *Lakenham*, *Eaton*, and *Ameringhale*, and the rectories there, and of *Brakendell*, are adjacent; that they had been part of the possessions of the dissolved priory and convent of *Norwich*, even from the foundation, and long before the reign of *Richard the Second*; that the said manor, and the *demefne lands* thereof, were before that time, and had been ever since, held tithe free; that in the year 1094. *Herbert, Bishop of Norwich*, founded the church, and in the year 1101 constituted monks there, and granted them the holidays which *King William Rufus* had given to them; the *Feast of Pentecost*; the tithe of the said bishop's manor and *Lakenham*, together with all things to the said village belonging, besides *Ameringhale*, all which the said *Herbert, Bishop of Norwich*, gave to God and the church for food and raiment of the monks; and all which were held tithe free; that between the years 1312 and 1386, several persons were instituted vicars, at pleasure, of the said church of *Lakenham*, on the presentation of the said prior and convent; that the prior of *Norwich* obtained a grant or licence from *John De Grey*, bishop of that see, some time after the twelfth century, by which it appeared, that the said bishop granted to the monks of *Norwich* the several churches aforesaid, to be possessed to their proper uses, saving to the said bishop and his successors the pontifical and parochial rights; and in particular gave licence to the said monks, that when it should happen that the said church of *Lakenham* should be void, they might enter upon the said void possession, and serve it by their chaplain at pleasure; so that after the several statutes of *Richard the Second* for endowing of vicarages, and that of *King Henry the Fourth*, which prohibits all appropriations of vicarages, or any religious person to be vicar, the said prior and convent never after presented to the said church, nor the said dean and chapter until the year 1625; that from the year 1386 till the year 1610, being two hundred and twenty-four years, there was not any vicar instituted and inducted therein; but that during that time it was served by their chaplains removeable at pleasure; that the said vicars had not any portion of tithes assigned

assigned to them, or received any out of the rectory or any part of the *demefne lands* of *Lakenham*, they being always held tithe free; that such vicars were only *curates* or *stipendary chaplains*, totally exempted as well from the vicar as the said dean and chapter, as rectories impropriate, by the laws aforesaid; and that the whole tithes became incorporated in the inheritance of the land, and therewith did well vest in THE CROWN by virtue of the 31. Hen. 8. and, from the said king, in the said dean and chapter, and so passed from them into the hands of *Edward the Sixth* by the surrender aforesaid, and was granted to *Gresbam* in the same manner. But they admitted, that the defendant *Bardwell's* husband might, for peace's sake, have paid his tithes to the plaintiff, as in the said amended bill is mentioned.

Fox
against
BARDWELL;
et à Contra,

Lord Berkeley and others, together with the said defendants, filed their *cross bill* against the plaintiff *Fox* and the dean and chapter of *Norwich*, insisting on the matters and things set forth in the said defendant's answer to the original bill; and they set forth their titles to the *demefne lands*, &c. in the said parish of *Lakenham*; and prayed a full discovery of the matters in question, and that the defendant *Fox* might account for what he had received.

The defendants
file a cross bill.

The vicar, by his answer to the cross bill, said, that the vicarage of *Lakenham* was an anciently endowed and perpetual vicarage; and set forth the matters to the same effect as in his original amended bill; and also the contents of *Bishop Herbert's* charter or grant to the monks of the cathedral church of *Norwich*. He also stated, that some of the vicars might, for peace's sake, have accepted of some compositions for the vicarial tithes of *Lakenham Hall Farm*; that fifty pounds a-year had, for time immemorial, been constantly paid to the vicars there for the tithes of *Lakenham Water Mills* and meadows, without dispute; and that the plaintiff *Lackford*, the present occupier of the *Mills*, tenement, and meadow, had always peaceably paid him the same as a composition for the tithes of the said mills.

The vicar an-
swers it.

The dean and chapter of *Norwich* answered, and set forth, that the said vicarage of *Lakenham* was, they believed, an ancient endowed and perpetual vicarage; that a succession of vicars were instituted therein in the fourteenth century; that though the said vicarage might lie vacant for several years, yet they found, by divers ancient records belonging to their church, that the said vicarage was and continued subsisting and lawfully void; and that the same perpetual vicarage had been again filled up for many years, first by THE CROWN, on account of lapse, and ever since by the presentation of the said dean and chapter; and they set forth the several grants and leases as before stated; and said, that they believed that they had been at one time deprived of their rights and possessions, but were restored to them on the

The dean and
chapter of *Nor-
wich*, as impro-
priator of the
rectory of *La-
kenham*, insist on
their right to the
great tithes
thereof.

Fox
against
BARDWELL;
et c. Contra.

The causes
heard.

The defendants
to the original
bill ordered to
account to the
vicar for the
tithes of the *Demefne*
of the manor
of *Lakenham*.
The cross bill dis-
missed with costs.

The plaintiff's
petition for a
re-hearing re-
jected, because
six months had
elapsed.

The defendants
appeal to the
house of lords.

The dismissal
of the cross bill
reversed.

restoration of *Charles the Second*, with the like charge upon *Lord Berkeley* of ten pounds *per annum* for the tithes of the *demefne* lands of the said manor; by which means the owners thereof had ever since enjoyed the tithe of corn.

In both causes the plaintiffs replied, and the defendants rejoined, and witnesses were examined on both sides; and upon hearing counsel for all parties; and on reading the answers, and several proofs in the cause;

THE COURT ordered the defendants to the original bill to account with the plaintiff for all the tithes demanded by the said bill arising, happening, and renewing on the lands in their respective occupations in the said parish of *Lakenham*, and for the values of the tithes of all such titheable matters and dues for and during the time charged or required in or by the said bill; and that the cross bill be dismissed with costs.

The plaintiffs, in *Hilary Term*, in the seventh year of *George the Second* 1734, petitioned the Court for a re-hearing; but the Court thought proper to refuse a re-hearing, because application was not made for that purpose within six months after pronouncing the decree, although the decree was not then passed.

On the eighteenth of *March* 1735, *Bardwell*, and the other defendants to the original bill, appealed to THE HOUSE OF LORDS, insisting, that although vicars might have been anciently instituted in this church, yet no vicarage being endowed, the present vicar, *Folchier*, was not entitled to any tithes, for that tithes are not due of *common right* to a vicar; and that, in the present case, there was not the least evidence of any endowment, or that tithes had ever been paid for the *demefne* lands of the manor of *Lakenham*, except under the decree made against *Ward*, which had been obtained upon a mistaken and improper defence, and on the bill to which the owners of the inheritance were not parties, and by which, therefore, they could not be bound; that expecting the court would do nothing without a trial at law, they went no further on the hearing than to open the several pleadings in order to settle a proper issue to try the exemption; that the said exemption depends upon old records and other written evidence, and also upon a great variety of facts which they were ready to make out; and that the right was now, in effect, determined against them without a hearing.

After hearing counsel on the appeal, it was ordered and adjudged, that the order of dismissal therein complained of should be reversed; and that the court of exchequer should proceed to hear the causes upon the pleadings and proofs taken therein.

On

On the sixth of *November* 1735, upon reading the depositions; the books of account of *R. Casling, Esq.*; a decree in this court, dated the fifteenth of *May*, in the eleventh year of *William the Third*, in the case of *Folchier v. Ward*; another decree, in the case of *Sherwood v. Ward*, dated the twenty-fourth of *February* 1723; another of the fifteenth of *April* 1725; and several ancient grants and leases on the part of the defendants; the plaintiff *Fox's* institution being admitted;

Fox
against
BARDWELL;
et c. *Contra*.

The court of exchequer rehears the cause.

THE COURT of Exchequer again ordered the defendants to the original bill to account for the tithes demanded by the said bill; and that the cross bill be dismissed with costs.

The defendants again decreed to account.

The defendants appealed a second time from this decree to THE HOUSE OF LORDS.

The defendants appeal.

But the House of Lords, after hearing counsel on the appeal, ordered the same to be dismissed, and the decree therein complained of to be affirmed; and the appellants to pay the respondent *John Fox* two hundred pounds for his costs in respect of the said appeal.

The house of lords dismiss the second appeal.

On the twenty-sixth of *July* 1736, the deputy remembrancer made his report in this cause; which report was confirmed with costs; and the defendants ordered to pay the sums reported to be due.

The defendants ordered to pay.

BENDISH, Widow, against KEMBLE.

Essex, 31st *May* 1733.

TRIN. TERM,
7. GEO. 2.

THE impropiator of the great tithes arising within the parish of *East Ham*, in the county of *Essex*, particularly of corn, grain, grass, hay, and wood, charged that, by the custom of the parish, the tithes of hay ought to be set out in *hay cocks*, and those of wheat and rye in *shocks*.

The impropiator of *East Ham*, in *Essex*, claims the tithes of wood, wheat, and hay.

The defendants admitted the plaintiff's title to the impropriation, and to the great tithes, but not to the tithe of the wood growing in hedge-rows and made into faggots; that they had set out their tithes of grass in grass cocks, and their tithes of corn, wheat, and rye, in sheaves; but that the plaintiff had refused to take the same away, and that they spoiled on the ground; and they insisted, that the plaintiff ought to make the tithe grass into hay at her own expence, or otherwise to pay them for the same; and that they were not obliged, by the usage and custom of the parish, to set out the tithes of their corn and grain in shocks.

The defendant says, no tithes are due for wood cut from hedge-rows, made into faggots, and sold;

that he set out his grass in grass cocks, and his wheat in sheaves.

THE COURT ordered the defendants to account for the tithe of wood cut from hedge-rows, and made into faggots, and fold,

The tithe of the wood decreed.

The

BENDISH

against

KEMBLE.

An issue to try,

whether by

The Court also directed an issue to try, "Whether the manner of setting out the tithes of wheat and rye within in parish of *East Ham* is in shocks or the sheaves?"

custom wheat is to be set out in shocks or in sheaves.

The bill dismissed, as to tithe hay.

The jury find that wheat is to be tithed by shocks.

The tithes of wheat decreed.

Costs allowed as to wheat and wood.

The report confirmed.

The court also ordered the bill to stand dismissed with costs, as to the demand of tithe hay in hay cocks.

The said issue was tried, and a verdict given for the plaintiff; and upon reading the *poslea*, it appearing that the manner of setting out of the tithes of wheat and rye within the parish of *East Ham* is in shocks;

THE COURT, on the twelfth of *November* 1733, ordered the defendants to account for the tithes of wheat and rye by shocks, and of hay by grass cocks; the plaintiff to have his costs, both at law and in this court, with respect to the tithes of wheat, rye, and wood; and, as to all other matters, the bill to be dismissed with costs.

The deputy made his report, dated the ninth of *February* 1734; and on the twenty-second, it was confirmed with subsequent costs.

JAS. REYNOLDS.

LAW. CARTER.

J. COMYNS.

WM. THOMSON.

TRIN. TERM,
7. GEO. 2.

GIBBS against GOODMAN.

Somersetshire, 11th June 1733.

The vicar of *Bedminster*, in *Somersetshire*, claims the tithes of milk and calves.

THE vicar of *Bedminster*, with the chapels of *Saint Mary Radcliffe* and *Saint Thomas*, in the city of *Bristol*, and the chapel of *Abbott's Leigh* thereunto annexed, claimed all small tithes, and particularly the tithes of calves and milk yearly arising within the said parish and chapelries, or some satisfaction for the same; and stated a decree in the cause of *Thompson v. Wright* and others (*a*).

Moduses pleaded.

The defendants insisted on two *moduses* in lieu of the tithes of milk and calves.

Issue directed to try,

THE COURT directed the following issues upon the *moduses* insisted on by the defendants in their answers, to be tried by a special jury, and if any thing special, the judge to indorse the *poslea*.

the *modus* of 4d. a cow in lieu of tithe milk;

FIRST, "Whether fourpence, in satisfaction of the tithes of milk of each cow, is due and payable?"

(*a*) See this cause reported vol. 1. Higginbottom, vol. 1. page 424; and page 221. See also the case of *Cox v. Hill v. Branfon*, vol. 3. 4th *February* *Livesey*, vol. 1. page 152; *Horton v.* 1762, Hilary Term 2. Geo. 3.

SECONDLY, "Whether a *modus* of six shillings and eightpence, "for every tenth calf, in satisfaction for the tithes of calves is "due and payable?"

GIBBS
against
GOODMAN.

8d. in lieu of every the *modus* of 6s. tithe calf.

The jury found that the *modus* of fourpence in lieu of tithe milk of each cow is good, and payable at *Easter*, within and throughout the said parish and chapelries, by the parishioners and occupiers of land therein, for and in lieu and full satisfaction of the tithes of milk of each cow depastured therein, under the denomination of *cow white*.

The jury find the *modus* as to milk;

The jury also found the *modus* of six shillings and eightpence a-year for every tenth calf within the same parish and chapelries, for and in lieu and in full satisfaction of all tithes of calves.

and also as to calves.

The plaintiff's counsel objected to the legality of the *modus* of six shillings and eightpence payable for every tenth calf, because it does not appear by the custom that any thing is payable to the vicar for any less number than ten calves; and therefore prayed that the defendants may account with the plaintiff for the tithes of their calves.

But it appearing that the custom was silent as to tithes of calves under the number of ten;

THE COURT, on the twentieth of *May* 1734, after full debate of the matter, ordered, that the bill, as to the tithes of milk, be dismissed with costs at law and in equity; and that the defendants shall account for the tithes of the calves which they had fallen within the parish and chapelries, during the time demanded by the bill; the plaintiff to have his costs in respect of tithe calves.

the Court dismissed the bill as to tithe milk, and decree the defendants to account for tithes of calves.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMPSON.

WALKER against TUTTON.

Somersetshire, 26th November 1733.

MICH. TERM,
7. GEO. 2.

THE vicar of *Clevedon*, in the county of *Somerset*, claimed the small tithes, *Easter* offerings, and other dues which had yearly arisen therein, since *July* 1725.

The vicar of *Clevedon*, in *Somersetshire*, claims tithes in kind.

The defendant said, that he occupied a farm (except the messuage and twenty three acres he let) in *Clevedon*, called *Inn Ground* and *Warth Land*, and insisted on the following *modus*es, one penny for a calf; three halfpence for a lamb; one penny yearly for every acre of land wholly fed and depastured with unprofitable cattle; and fourpence an acre from every person inhabiting in any other parish, and occupying land in *Clevedon*, and no more, yearly, for every acre of lands wholly fed with unprofitable cattle, by such stranger in full satisfaction for all tithes for

The defendant sets up several *modus*es.

WALKER
against
TUTTON.

for such agistment and feeding; and he further said, that the said *modus* had been usually paid to the vicars on the second of August yearly.

The tithes decreed in kind.

THE COURT, on reading the answer, the proofs, and on full debate, ordered the defendant to account for all the tithes and titheable matters demanded by the bill; the costs to be reserved till after the report.

REYNOLDS, Chief Baron.
CARTER, Baron.
THOMPSON, Baron.

HILARY TERM
7. GEO. 2.

SALMON against RAKE.

Somersetshire, 24th January 1733.

The bill states, there is a *modus* of 4s. 2-year payable at *Lammas*, to the rector of *Holcombe*, in *Somersetshire*, in lieu of the tithe hay of *Holcombe Farm*, excepting that part of it which is called *Pit in Hays*, the tithe hay of which belongs to the impropiator of *Kilmerston*; and that one of the defendants who had a share of the said farm ought to pay a proportionate part of the said *modus*.

S.C. Bunb. 170. *mutis*.

That there is a *modus* of 2d. an acre payable at *Lammas* yearly, to the said rector in lieu of the tithe hay of the two farms called *Pittman's* and *Ruddock's*; that there is also a *modus* of 4s. 2-

year payable as aforesaid in lieu of the tithe hay of *Moor's Farm*, and 2d. an acre, in lieu of tithe hay of the farms called *Millard's*, *Everett's*, *Allen's*, *Strong's*, *Harvey's*, *Hewish's*, *Chivers's*, and *Gotheridge's*, excepting two acres of *Millard's* and one acre of *Everett's*, called *Littlefield*, the tithe hay of which belongs to the impropiator of *Kilmerston*;

THE bill stated, that the defendant *Rake* was rector of *Holcombe*, in the county of *Somerset*, and entitled to the tithes of hay, and to all small tithes, *Easter* offerings, and other dues arising therein; that the plaintiff *Salmon* was seised in fee of three fourth parts of *Holcombe Farm*; that the other fourth part belonged to the defendant *Mary Salmon*; that there had been immemorially payable by the occupiers of the said farm to the rector, at *Lammas* yearly, or so soon after as demanded, four shillings, as a *modus* in lieu of the tithes of all grafs yearly growing on the said farm and made into hay (except the tithe hay of such part as was called *Pit in Hays*, which had been immemorially paid to the impropiator of *Kilmerston*); that the one fourth part of the said farm was granted to the defendant *Mary Salmon*; that since such grant the plaintiff *Salmon* had yearly allowed to the tenant three shillings, and to the defendant *Mary Salmon* one shilling, for the said *modus*. The bill also stated, that the plaintiff *Long* was also seised in fee of two tenements and lands called *Pittman's* and *Ruddock's*, for which there was payable to the rector a *modus* of twopence an acre for meadow land, and so proportionably for a greater or less quantity, at *Lammas* yearly, in lieu of the tithes of all the grafs yearly growing on such meadow land, and made into hay. The bill further stated, that the plaintiff *Lord Clinton* was also seised in fee of *Moor's Farm*, and of the tenements called *Millard's*, *Everett's*, *Allen's*, *Strong's*, *Harvey's*, *Hewish's*, *Chivers's*, and *Gotheridge's*; that the said *modus* of four shillings was payable for *Moor's Farm*; and that for *Millard's Tenement* twopence was payable for every acre of meadow (as before stated) except the tithe hay of two acres of meadow called *Little Field*, part of the said tenement, which had been paid to the impropiator of *Kilmerston*; the same for *Everett's Tenement* (except the tithe hay of one acre

called

called *Littlefield*); and also the like *modus* for *Allen's, Strong's, Harvey's, Chivers's, Hewish's,* and *Gotheridge's Tenements*. The bill also stated, that the following *modus*es were payable at *Easter* yearly, viz. for every cow, twopence; for every heifer three halfpence, in lieu of tithe milk; for every horse or mare kept for carrying coals, or other carriage, sixpence, in lieu of the tenth of the profit made by the labour of such horse or mare, or the hire thereof; for every garden, one penny, in lieu of the tithe of the fruit and herbs; for every orchard, fourpence, for its fruit; for eggs, one penny; for a colt, one penny; and for *Easter* offerings, twopence. The bill also stated, that the method of tithing calves and pigs in the said parish, had immemorially been, that if an occupier of land had seven calves or seven pigs, the rector was to take one calf or one pig, but no more unless there were seventeen calves or seventeen pigs, but in case the occupier had not seven calves in one year, then, by custom the owner of such calves under seven, had or ought to pay a shoulder for each calf killed, immediately after it was killed, or sixpence at *Easter*, at the election of the owner; for each calf sold sixpence; for each calf weaned to rear, one halfpenny, and so in like manner if above seven and under seventeen calves, in lieu of the tithes thereof. The bill also stated, that the several *modus*es had, time out of mind, been observed by, paid to, and received by the defendant *Rake*, and all his predecessors, but that he had lately refused to accept the same, and insisted on tithes in kind. The bill therefore prayed, that the defendant *Rake* might set forth why he refused to accept and receive the said *modus*es, and to observe the said method of tithing; and the defendant *Mary Salmon*, why she refused to contribute her fourth part of the said *modus* for *Holcombe Farm*; and that she might be compelled to pay the same; that proper issues might be directed for trying the said *modus*es; that the testimony of the plaintiff's ancient witnesses might be perpetuated; and that the said *modus*es might be established by the decree of the court, and an injunction granted to stay the defendant *Rake's* proceeding against the plaintiffs in the ecclesiastical court.

SALMON
against
RAKE.

that there are
other *modus*es in
lieu thereof;

and other *modus*es
in lieu of the
tithes of calves
and pigs.

The defendant *Rake* said, that he was entitled to all the great and small tithes in kind, yearly arising in the said parish, except in those matters to which the *modus*es hereafter admitted related; that he believed the plaintiff *Salmon* was seised of three fourths of *Holcombe Farm*, and the defendant *Mary Salmon* of the other one fourth; but he denied the existence of the *modus* of four shillings in lieu of tithe grass, as stated in the bill; and said, that he had been under a *composition* with the occupiers of it for thirty shillings yearly, to *Lady Day* 1732. He admitted, that the tithe hay of *Pit in Hays* belonged to the impropiator of *Kilmerdon*; and said, that he had been under a *composition* for the

The rector ad-
mits some of the
*modus*es and de-
nies others.

SALMON
against
RAKE.

the other part of the said farm, at twelpence in the pound for part, and eightpence for the other part, in lieu of all tithes arising thereon. He said, that he believed the plaintiff *Long* was seised of *Pittman's* and *Ruddock's*, but denied the custom, for that he had been under a composition with the occupier of the same at eightpence in the pound to *Lady Day* 1732, for all tithes. He also said, that he believed the plaintiff *Lord Clinton* was seised of *Moore's Farm*, *Millard's Tenement*, &c. as stated in the bill, but denied the customs for them, for that he had been under a composition for *Moore's Farm*, at six pounds a-year, and for *Millard's Tenement* at sixpence in the pound for all tithes, both great and small, to *Lady Day* 1732. He admitted, that the tithe hay of the two acres, called *Little Field*, belonged to the impropiator of *Kilmerston*; but he denied the custom as to *Everett's Tenement*, for that he had been under a composition of eightpence in the pound till the same time. He also admitted, that the tithe hay of the one acre, called *Little Field*, belonged to the impropiator of *Kimberston*; but denied the custom for *Allen's*, *Strong's*, *Harvey's*, *Hewish's*, *Chivers's*, and *Gotheridge's*, he having been under a composition at eightpence in the pound for all tithes. He admitted, that he had received of several inhabitants, for every cow, twopence; and for every heifer, three halfpence, as a *modus* in lieu of tithe milk; but he denied, that he had ever received sixpence for every horse and mare, as stated in the bill, but that, on the contrary, he had received one shilling for every horse and mare. He admitted that he had received one penny, in lieu of tithe fruit and herbs growing in the gardens; but denied, that he had received only fourpence for every orchard, and insisted on two shillings and sixpence, in lieu of the tithe fruit thereof. He admitted, that he had received for eggs, one penny; for every colt, one penny; for offerings, twopence. He admitted the method of tithing of calves and pigs to be as stated in the bill; but denied, that the custom was that the shoulder, or sixpence should be paid at *Easter*, at the election of the owner, and insisted, that the rector is entitled to a shoulder, and not to the sixpence. He denied, that there was any custom to pay for each calf sold sixpence; but admitted, that for each calf weaned to rear, one halfpenny was payable, and so in like manner if above seven and under seventeen, in lieu of the tithes thereof. He denied, that the several *moduses*, as stated in the bill, had been received by him or his predecessors, time out of mind, save as aforesaid; and said, that he, as rector, was entitled to the tithes of hay, corn, calves, colts, sheep, lambs, wool, milk, hemp, flax, hops, teasels, apples, pears, eggs, honey, wax, pigs, geese, gollings, and all other tithes whatsoever, in kind (except as before excepted). He admitted, that he had libelled some of the inhabitants for their tithes. He said, that he did not believe that such *moduses* had been paid, as stated in the bill; and that he had refused to receive the same, he being entitled to tithe hay

hay in kind. He also insisted on the tithe of apples growing in the several orchards newly planted within memory of man, and several other tithes, in kind, for which there never had been any *modus* paid within the said parish.

SALMON
against
RAKE.

The defendant *Mary Salmon*, by her guardian, admitted, that the plaintiff *Salmon* was seised of three fourths, and that she is entitled to the other fourth of *Holcombe Farm*; and insisted, that such *modus* was due for the tithe of the hay of the said farm, and desired that the same might be established; and said, that she was willing to pay her proportion to it.

The part owner of *Holcombe Farm* insists on the *modus* in lieu of tithe hay, and offers to pay part.

The plaintiff replied to the defendant *Rake's* answer; he rejoined; and witnesses were examined on their parts; and upon hearing counsel for all parties, except the defendant *Rake*; and reading two receipts, signed in 1718 and 1712;

The evidence read.

THE COURT decreed, that the several *moduses* mentioned in the bill shall be established and confirmed; that the several *moduses*, in lieu of tithe hay, shall be paid by the occupiers of the said farms at *Lammas* yearly; that the *moduses* for cows, heifers, horses, mares, gardens, orchards, eggs, colts, offerings, calves, and pigs shall be paid at *Easter* yearly, or so soon after as demanded, except only, that when any occupier of land in the said parish not having seven calves, or having above seven and under seventeen calves, shall elect to pay for each or any such calf that shall be killed a shoulder thereof, and not sixpence, then the shoulder of such calf is to be paid immediately after killed, to the rector of the parish of *Holcombe*, for the time being, or his farmer or lessee, in lieu and satisfaction of the tithes thereof; that this decree shall be binding and conclusive against him, unless cause be shewn to the contrary; that the defendant *M. Salmon*, and such other persons who shall hereafter hold and enjoy the fourth part of *Holcombe Farm*, now held and enjoyed by her, shall yearly contribute the sum of one shilling, the fourth part of the said *modus* of four shillings, for *Holcombe Farm*.

A decree nisi for all the *moduses* set up by the bill.

On the second of *May* 1734, the cause stood in the paper pursuant to the said decree; and, on the plaintiff's counsel praying that it might be made absolute, the defendant *Rake* shewing no cause, THE COURT made the same absolute accordingly, and ordered, that the said decree, and every part thereof be observed, executed, and performed according to the true intent and meaning thereof.

The decree made absolute and the *moduses* established.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMPSON.

ORLEBAR

EASTER TERM
7. GEO. 2.

ORLEBAR *against* GODFREY.

Bedfordshire, 6th May 1734.

The rector of *Sharnbrooke*, in *Bedfordshire*, is entitled to the great tithes, and to the tithes of beans, pease, and vetches arising in the said parish, and particularly in the five closes called *Bridge Close*, *Long Holme*, *New Close*, *Great Close*, and the *Dovehouse Close*.

THE bill stated, that the plaintiff *Orlebar* was seised in fee of the rectory of *Sharnbrooke*, in the county of *Bedford*; that on the first of *September 1722*, he and his mother granted a lease of the rectory and tithes (except the tithes of wood) to the plaintiff *Baker*, for nine years, at one hundred and nineteen pounds, four shillings a-year, on the conditions therein mentioned; that the defendants had, during that time, occupied *Bridge Close*, *Long Holme* or *Long Mead*, *New Close*, *Middle Close* or *Great Close*, and *Dovehouse Close*, in the said parish, the tithes thereof, or some satisfaction for the same, ought to have been paid to the said plaintiffs; that in the reign of *Queen Anne*, the then vicar of *Sharnbrooke* filed his bill against *Godfrey*, then owner of the lands and closes aforesaid, for *small tithes*, and that the defendant was decreed to account (a); that about *April 1716*, the plaintiff *Orlebar's* father, as impropiator of *Sharnbrooke*, filed his bill in the court of chancery against the said defendant *Godfrey* and others, for the great tithes of the said closes and lands; that the said *Godfrey* insisted, in his answer to the bill, that the said lands were extra-parochial; that the plaintiff replied; the defendants rejoined; and witnesses were examined; that the cause came on to be heard before THE LORD CHANCELLOR on the nineteenth of *November 1718*, when an issue was ordered to try, "Whether the said lands were out of the said parish, or not?" that the said issue was tried, and a verdict found for *Godfrey*; that THE LORD CHANCELLOR, being satisfied that the

(a) The cause of *Bolton v. Godfrey* came before the court of exchequer on the eighteenth of *June 1713*, Trinity Term, 12. *Queen Anne*. The plaintiff was vicar of *Sharnbrooke*, and he claimed the tithes of wood, wool, lambs, calves, milk, and other small tithes of the parish, and of the several closes hereafter mentioned. The defendant insisted on a *modus* of 3d. a cow, in lieu of tithe milk; and that all and every of the said closes, in respect of which the vicar demanded tithes, were not within the parish, nor titheable to the vicar thereof. The Court, on account of the great variety of evidence which was read on both sides at the hearing, directed an issue to try, "Whether the grounds in question, called "*Bridge Close*, *Dovehouse Close*, *Great Close*, *Long Mead*, *New Close*, *Wrench Holme*, and the yards, orchards, and gardens of or belonging to the mansion house of the defendant *Godfrey*,

"or any and which of them are, in respect of the small tithes arising out of the same, titheable to the plaintiff, as vicar of *Sharnbrooke*, or not?" the defendants to admit that the plaintiff is vicar and entitled to the tithes of wood, and the cause to be tried before a special jury. The cause was accordingly tried, after a view had been taken of the premises; and upon full and very long evidence being given on both sides, a verdict was found in favor of the vicar. The defendant applied for a new trial, which the Court refused, and a decree was made, that the defendant should account for the tithes of wood, wool, lambs, and all other the titheable matters and things had on the said grounds. The deputy remembrancer made his report of what was due for the said tithes, and, no exception having been taken thereto, the said report was, on the twentieth of *June 1713*, ratified and confirmed.

verdict

ORLEBAR
against
GODFREY.

verdict was contrary to the evidence, ordered a *new trial* on the same issue; and that there should be a view; that after such view was had, the trial came on before a special jury; and that upon full evidence, a verdict was found for the plaintiff's father that the said lands were within the said parish; that the said *Godfrey* thereupon moved for a new trial, but could not obtain it; that the cause came on to be heard on *the equity reserved*, on the twenty-fifth of *July* 1720; and that it was then decreed, that *Godfrey* should account for the tithes of the said lands; and that the plaintiff's said father should enjoy the same for the future; that on the third of *June* 1721, the plaintiff's father died, leaving the plaintiff's mother and himself heirs at law; that the plaintiff, immediately after his said mother's decease, on the nineteenth of *June* 1724, became, and still is rightfully seised of the said rectory. The bill therefore prayed, that the defendants might satisfy the plaintiff *Baker* for the values of the tithes of the said premises; that they might in future pay the tithes thereof; and that the plaintiff *Orlebar* might have his right to the great tithes of the said lands established.

The defendant *Stead* said, that it might be true that the plaintiff *Orlebar* was seised of the said rectory, and entitled to the *great tithes*, and to the tithes of beans, pease, and vetches; and he admitted, that he possessed the said lands therein, until *February* 1729; that he then obtained possession thereof and kept the same in his own hands until *March* 1731, without setting out the tithes, when he let the said close to the defendant *Godfrey*; but he insisted, that the said premises were *extra-parochial*.

The defendant *Godfrey* said, that the plaintiff *Orlebar* was seised as stated in the bill, and that he had let the premises to the plaintiff *Baker*; that he hoped that he should not be bound by the decrees and verdicts mentioned in the bill; and he set forth his titheable matters, and said, that he had paid to the impropiator three shillings and fourpence, for the tithes of *Dove-house Close*.

The plaintiffs replied specially, and thereby waived the tithes due for *Dove-house Close* for the years 1725 and 1726; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for the plaintiffs, and reading the defendant's answers, who did not appear, though duly served with *subpœna* to hear judgment, as by affidavit appeared;

THE COURT decreed, that the plaintiff *Orlebar's* right, as impropiator of the said rectory, to the *great tithes* of the said closes and lands before mentioned be established; and that the defendants shall come to an account with the plaintiff *Baker* for all the great tithes arising from the said several closes and lands, during their respective possession thereof, down from 1725 inclusive to the time demanded by the bill, except only as to the

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GODFREY.

close called *Dove-house Close*, of which close the defendants are to account for the tithes from 1727 inclusive, unless cause be shewn to the contrary, the defendants first paying five pounds costs of the day; before they are heard.

The defendants having complied with the said decree, the cause came on again on the seventeenth of *June* 1734; and upon hearing counsel, and reading, for the plaintiffs, the decree in a cause in chancery, dated the twenty fifth of *July*, in the sixth year of *George the First*, *Orlebar v. Godfrey*; the answer of the defendant *Godfrey*; an indenture made between *G. Cobb* and *J. Orlebar*, dated the twentieth of *April* 1694; the chirograph of a fine passed in *Easter Term*, the sixth year of *William and Mary*; the *possea* in the cause of *Orlebar v. Godfrey*, tried in the court of king's bench; another *possea* in the office of pleas *Bolton, clerk v. Godfrey*; a copy of a decree in chancery made the nineteenth of *November*, in the fifth year of *George the First*, *Orlebar v. Godfrey*; a copy of a *certiorari* and order of the *Easter* sessions at *Bedford*, in 1725; a rule of the court of king's bench, affirming the same, made in *Michaelmas Term*, in the twelfth year of *George the First*; several copies of entries, of the death and burials of several persons, taken out of the register books of the said parish of *Sharnbrooke*; a table shewing out the church-yard mounds of the parish of *Sharnbrooke*; several depositions in the aforementioned causes; several entries from parchment books concerning *Bolton*, the former vicar of *Sharnbrooke*; the deed of partition; the lease made from the plaintiff *Orlebar* to the plaintiff *Baker*; the several proofs in the cause; and on full debate;

THE COURT ordered the former decree of the sixth of *May* last to be ratified and confirmed; and the deputy having made his report, dated the twelfth *July* last, the report was on the tenth of *November* 1735 ratified and confirmed with costs.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMSON.

TRIN. TERM;
8. GEO. 2.

CROSSE against WARD.

Cambridgeshire, 1st July 1734.

The rector of *Wisbeach St. Peter's*, in the isle of *Ely*, is entitled to the tithes of corn, grain, and hay, in the manor of *Hirstoff*, in kind.

THE bill stated, that *E. Gibson*, being entitled by lease from the dean and chapter of *Ely*, for a term of years, to the rectory impropriate of *Wisbeach St. Peter*, in the *Isle of Ely*, with the chapelry of *Wisbeach Saint Mary*, in the said *Isle of Ely*, and to the tithes of the said rectory, did by lease, dated the twentieth of *November* 1730, demise the same to the plain-

tiff for eleven years, by virtue of which he claimed tithes from the defendant, for the year 1732.

CROSS
against
WARD.

The defendant said, that in the year 1732, he possessed arable land in the hamlet of *Wisbeach St. Mary*, part of the manor or reputed manor of *Hixtoff*; and he denied that the plaintiff was entitled to tithes, in kind, of corn or grain arising on any part of the lands belonging to the said manor; for that throughout the said manor and the *demesnes* thereof, there had been time out of mind a *modus*, in lieu of tithes thereof in kind; and that he had tendered the same to the plaintiff, and was ready to pay it, but that the said bill was filed before it became due.

An issue was directed to try the *modus*, as insisted on by the defendant is his answer, *viz.* "Whether there is, and has been, time out of mind, a *modus* or customary payment for and in lieu of tithes in kind of all sorts of corn, grain, grass, or hay growing within the manor of *Hixtoff*; otherwise *Thalamas Drive*, of one penny for every acre of arable, meadow, and pasture ground, whereon any corn, grain, grass, or hay is growing, payable to the rector of the said rectory of *Wisbeach Saint Peter*, or to his lessee yearly, upon the *Tuesday* in *Easter Week*, in lieu of all tithes arising on such grounds, or not?"

A trial was accordingly had, and a verdict given for the plaintiff, that there was not any such *modus*.

THE COURT ordered the defendant to account for his tithes in kind, with costs, both at law and in equity. The deputy reported, that nine pounds, eighteen shillings were due to the plaintiff, with costs, and the report was, on the tenth of *February* 1734, confirmed.

LAITHES against CHRISTIAN.

TRIN. TERM,
8. GEO. 2.

Cumberland, 20th June 1734.

THE plaintiff *Laithes* and others, as landholders in the parish of *Croftbwaite*, in the county of *Cumberland*; the plaintiff *Rowen* and others, as landholders within the *Forest of Withburne* part of and within the same parish; and the plaintiff *Wilfot*, as a landholder within the *Forest of Borrowdale*, part of and within the said parish, as well on behalf of themselves as of others, the owners and occupiers of lands within the said parish and titheable places thereof, filed their bill, stating that the said parish was very large, rocky, and mountainous; that they depastured therein several flocks of breeding sheep, whose lambs are called *lamb*s, till the first grazing, which is generally about *Martinmas* next after they are fallen, and that from that time till the first shearing, which is a little before *Midsummer* next following, from that time until the first shearing, about the *Midsummer* following, they are called *bag*s; and that those which have been shorn twice, are called *elder sheep*, or *tithe sheep*.

The owners of lands in the parish of *Croftbwaite*, in the forest of *Withburne*, and in the forest of *Borrowdale*, in *Cumberland*, state

that the produce of their sheep, from the time of their birth until the first grazing, about *Martinmas* following, are called *lamb*s; that

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they

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LAITHES
against
CHRISTIAN.

that they derive no profit until they become *elder sheep*; that there are *moduses* in lieu of the tithes of *lambs*, and the wool of *hogs*, viz. by the landholders in the said *forests* on the *Monday* after the *Midsummer Day*, next following the birth of the *lambs*, except those that die before that day; 11d. for the tithes of every ten *lambs* and *hog wool*, when *hogs*; 10½d. for every nine; 10d. for every eight; and so decreasing the price with the decrease of number;

that the landholders in the *parish*, excepting in the said *Forests*, and of the tithe free farms called *Monkball* and *Brickett*, pay a *modus* of 10d. for every ten *lambs*, and so decreasing a halfpenny in a unit, as aforesaid,

in lieu of the tithe of such *lambs*, and their wool as *hogs*;

they are called *hogs* or *hog sheep*; that all their *sheep* are distinguished into two sorts, viz. that those which have been never or but once shorn, are called *lambs* or *hog sheep*; and that those which have been shorn oftener are called *the elder* or *titheable sheep*; that they are at great expence in rearing the *hog sheep*, and being considerable losers by them till their first clipping, they rely upon their becoming *elder sheep* for their hopes of profit; that the said *parish* is a *vicarage*; that there had been yearly paid to the vicar the several *moduses* following, in lieu of the tithes of *lambs* fallen, and of the wool of *hog sheep* clipped therein; and that tithes in kind had never been paid in memory of man for the same, viz. that the landholders within the said *forests* had always paid, on the first *Monday* after *Midsummer Day* next after the *lambs* had fallen, or as soon after as demanded, to the vicars there the several customary payments following, viz. for every ten *lambs* (except those that die before the said *Midsummer Day* next after such *lambs* had fallen), and for the wool of the first shearing of such ten *lambs* when they come to be *hog sheep*, which is called *hog wool*, elevenpence, and no more; and for every nine *lambs*, (except as before excepted) and the wool of the first shearing thereof as aforesaid, tenpence halfpenny, and no more; and for every eight *lambs* as aforesaid, tenpence; for every seven *lambs* as aforesaid, ninepence halfpenny, and no more; for every six *lambs*, ninepence; for five *lambs*, fivepence halfpenny; for every four *lambs*, twopence; for every three *lambs* threepence halfpenny; for every two, one penny; and for every one, one halfpenny; that the said sums had been time out of mind paid to the vicar as a *modus*, and in lieu of the tithes of such *lambs* and of the wool of their first shearing. The bill also stated, that the occupiers of lands within the said *parish* (except lands in *Borrowdale*, and *Withburne*, and two farms called *Monkball* and *Brickett's Wood*, which were reputed to be tithe free) had paid yearly on the first *Monday* after *Midsummer Day* next after the *lambs* had fallen, or so soon after as demanded, the several sums or customary payments following, viz. for every ten *lambs*, (except as before excepted) and for the wool of the first shearing of such *lambs* when they come to be *hog sheep*, which is called *hog wool*, tenpence, and no more; for every nine, ninepence halfpenny; eight, ninepence; seven, eightpence halfpenny; six, eightpence; five, fivepence; four, twopence; three, one penny; two, one penny; and one, an halfpenny, and no more as aforesaid; that the said several sums had been constantly paid to and accepted by the vicar, as a *modus*, in lieu of the tithe of such *lambs*, and of the wool of their first shearing, when they were called *hogs*; that they hoped he would have continued to accept the said *moduses*, but that he had refused so to do; and, endeavouring to destroy the said *moduses*, had filed his bill in this court against *Wren* and others, to pay tithe *lamb* and *wool* in kind;

kind ; that the defendants set up *modus*, and filed a *cross bill* to establish the same ; but that the *modus* not being fully proved, the vicar obtained a decree therein (a). The bill therefore prayed, that the defendant might answer, whether there were not such *modus* or customary payments in lieu of the tithes of lambs and wool as before stated, and why he refused to accept the same, as his predecessors had done ; that the same might be settled and established by the decree of this court ; that an injunction might issue to stay his proceedings as law ; and that he might refund all monies levied or received from the plaintiffs upon their conviction before the justices.

The defendant admitted, that the plaintiffs lived in the said parish, and were seised of divers messuages and lands therein ; that there were the said two forests ; that the plaintiffs and the other parishioners kept stocks of sheep for breeding ; that the lambs thereof are generally grazed about the *Martinmas* after their falling ; that until that time they are called *lambs* ; that from *Martinmas* till the *Midsummer* following they are called *bogs* ; but he denied, that all lambs were called *bogs*, from their first clipping, for that there had been lambs clipped before the *Martinmas* next after their fall, and before their grazing. He also admitted, that the sheep were distinguished

LATTES
against
CHRISTIAN.
and pray, that
the said *modus*
may be esta-
blished.

The defendant
admits the se-
veral appella-
tions of *lambs*,
bogs, and *elder*
sheep ; but de-
nies that *elder*
sheep alone are
titheable ;

(a) On the twenty-sixth of *October* 1732, Michaelmas Term, 6. Geo. 2. *Christian*, as vicar of the parish of *Croft-woite*, filed his bill in this court against *Wren*, and other landholders therein, claiming the tithes of hay, sheep, lambs, wool, and other small tithes, and praying, that for the future the method of tithing wool within the parish might be settled and established. The defendants, by their answer, described the manner of distinguishing their sheep, and the produce thereof, into *lambs*, *bogs*, and *elder sheep*, as set forth in the above bill, and insisted on the same *modus*, in lieu of the tithes of the said *lambs*, and also of the wool of the first clipping or shearing of such lambs the first spring, when they were called *bogs* or *bog sheep*, and averred, that the said *modus* had always been accepted, and that tithes in kind had never been paid for such lambs, or their first wool ; they also said, that by the custom of the said parish and places, the wool of the *elder sheep* was always bound up after the sheep were shorn, and the bundles weighed, and that the tenth part thereof by weight had always been paid to and accepted by the vicar, without shewing the remaining nine parts, in lieu of the tithe wool of such *elder sheep*.

The defendants filed a *cross bill*, in which there was some little variance, as to the *modus* for *lambs* and *bog wool*, from the said *modus* as stated in the answer. The vicar in his answer to the *cross bill* denied, that the said *modus* were "in lieu of tithe wool of the first shearing of such *lambs*, when they come to be *bogs* or *bog sheep* ;" and denying, that he had ever accepted or even heard of such *modus*, submitted to the court, that if they were proved, they could not destroy his right to take the tithes in kind of wool from *bogs*, which were clipped near a whole year after the payment of the money pretended to be payable in lieu of the same ; and, admitting that he had never demanded the tithes of *lambs* in kind, insisted, that the said custom, however ancient it might be, was unreasonable and unjust ; but he said, that he was content to receive the said payment, in lieu of the tithes of *lambs* only. THE COURT, upon hearing the causes, ordered the defendants to the original bill to account for the tithes demanded by the bill ; the *cross bill* to be dismissed with costs ; and, on the 28th of May 1733, the deputy's reports of the sums due for tithes to be ratified and confirmed.

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into

LAI THES
against
CHRISTIAN.

or that the owners are losers by rearing the lambs.

He admits that he and his predecessors had always received the said sums in lieu of the tithes of lambs, and the wool of bogs;

but says such sums are only in lieu of the tithe lambs and not for the wool of the first shearing; and that he is ready and willing to accept the said payment in lieu of the tithe of lambs only;

and admits, that *Monksall* and *Birketts* are tithe free.

The defendant neglects to attend to the hearing.

The several *modus*, set forth in the bill, established *vis*, &c.

The cause is reheard, and issues directed to try the validity of the *modus*.

into two sorts, *viz.* lambs, or those that had been never or but once shorn, and *elder sheep*, or those which had been shorn oftener; but he denied, that by such distinction, the *elder sheep* only were titheable, especially as it appeared, by the plaintiff's own shewing, that they could not be properly so accounted, for that they insisted on *modus* in lieu of the tithes both of lambs and bog wool; and he also denied, that the plaintiffs were losers by rearing them, as stated in the bill. He further said, that he had been vicar of *Croftbwaite* for five years past; and he admitted, that tithes in kind had never been paid or demanded for lambs, he having been contented to accept of the customary payment, as his predecessors had done; but he denied, that the vicar, by endowment, prescription, custom, or otherwise, was bound to receive the several *modus* stated in the bill in lieu of the tithes of lambs and bog wool, and insisted, that the several sums therein mentioned had been paid for the lambs bred in the forests of *Borrowdale*, *Withburne*, and other parts of the parish, as a *modus* only, for the tithes of lambs, excepting such lambs as died before the *Midsummer Day* next after such lambs fell, and not for the tithe of the wool of their first shearing; the plaintiffs contending that no tithe or *modus* was due for the same, and thereby insinuating that the *elder sheep* were the only sheep which were accounted titheable. He denied that he had, in order to destroy any ancient *modus*, or to compel them to pay any tithe of lamb in kind, prosecuted the plaintiffs; and said, that he had been always ready to accept the said payments in lieu thereof. He admitted, that he had filed the bill mentioned, and that he had also prosecuted some of the plaintiffs before the justices. He also admitted, that there were two farms called *Monksall* and *Birkett Wood*, generally reputed tithe free of sheep or wool, or any *modus* in lieu thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for the plaintiffs, and none attending for the defendant, and reading his answer, and affidavit of due service of *subpoena* to hear judgment;

THE COURT ordered, that the several *modus* in lieu of the tithes of lambs, and of the wool of their first shearing, when they come to be and are called *bogs* or *bog sheep*, which is called *bog wool*, be established; that the defendant do refund all such such sum or sums of money, as he had levied and received from the plaintiffs, or any of them, upon their convictions before the justices of the peace, and pay the costs of this suit, unless cause be shewn to the contrary, he first paying five pounds costs for this day's attendance before he be heard.

On the thirty-first of October 1734, upon hearing counsel for all parties, the Court ordered a trial at law, to try before a special

special jury the several *modus*es, as laid in the bill; the judge to indorse on the *possea* any thing special; and the equity to be reserved for further directions, till after the trial had.

LAITHES
against
CHRISTIAN.

A trial was accordingly had, and a verdict given thereon in favour of the defendant, as to all the *modus*es; and upon reading the decree and *possea*;

The jury find for the defendant, as to all the *modus*es.

THE COURT ordered the bill to be absolutely dismissed, with costs, both at law and in equity; and the injunction granted formerly in this cause, to stop the defendant's proceedings at law against the plaintiffs, touching the matters complained of in the said bill to be dissolved.

The bill dismissed with costs, and the injunction dissolved.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMPSON.

COUSSMAKER *against* THE BISHOP OF LONDON.

MICH. TERM,
8. GEO. 2.

Middlesex, 18th November 1734.

THE bill stated, that the plaintiff was seised in fee of the rectory impropriate of *Staines* and *Ivenny*, in the county of *Middlesex*; that by virtue thereof, the freehold and inheritance of the *chancel* adjoining to the church in *Staines* was in him; that he had been several years in possession thereof; that he had kept the same in repair; and that he had an undoubted right to dig up the soil of the said *chancel*, to make vaults therein for the burial of the dead, and to give leave to any person so to do, provided the same was kept repaired and ready for the celebration of divine service. The bill therefore prayed, that the defendants might answer the premises; and that the defendant *Williams*, who was vicar of the parish, might be enjoined from giving licences to persons to bury their dead in the said *chancel*, and the plaintiff be quieted in the possession thereof.

The impropriator of *Staines*, in *Middlesex*, claims the exclusive right of digging the soil in the *chancel* of the said church; of making graves; and licensing the burial of the dead therein; and prays, that the vicar of the parish may be enjoined from giving such licence.

The defendant *Williams* admitted, that the plaintiff was seised in fee of the rectory, and that the inheritance of the *chancel* was in the plaintiff, but denied, that he had a right exclusive of any other person to dig up the soil there, and to make vaults for the interment of the dead.

The vicar denies, that the impropriator has an exclusive right to the *chancel*.

The bishop of *London* said, that he was ordinary of the parish of *Staines*; that the said parish was in the diocese of *London*; that he instituted the defendant *Williams*, the present vicar; and that, as ordinary, he had a right to see the *chancel* kept in repair for the celebration of divine service; but that he knew not to whom the right or privilege of burying, or licensing

The ordinary of the diocese submits the interests of the church to the care of the Court.

COUSMAKER
against
THE BISHOP OF
LONDON.

The attorney
general submits
the interest of
THE CROWN to
the care of the
Court

The cause
heard.

The impropria-
tor's right to the
freehold of the
church, and to
licence the bu-
rial of the dead
in the chancel
established, and
his possession
thereof quieted.

others to bury, did belong; that he was a stranger to all other matters in the bill; and that he submitted to the judgment of the Court, as to the right of the church.

The attorney general said, that he was a stranger to all the matters charged in the bill, but insisted on all right which appear to belong to THE CROWN, and submitted the same to the care of the Court.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel for all the parties, and on reading the proofs, and on full debate of the matter;

THE COURT decreed, that the plaintiff's right to the freehold, and the inheritance of the chancel adjoining to the church of *Staines*, and to grant licence of burial therein be established; that a perpetual injunction do forthwith issue to quiet the said plaintiff, or any claiming under him in the possession thereof, from any claim or demand of the defendant *Williams*, the present vicar, or his successors, or any other person claiming any other right or title whatsoever under them; and that the said present vicar, and his successors, and all and every other person or persons whatsoever claiming under them, are hereby enjoined from granting any licence for burying any person in or digging up the soil of the said chancel, without special leave first had from the plaintiff, or those claiming under him,

J. REYNOLDS,
LAW. CARTER,
J. COMYNS.
WM. THOMSON,

EASTER TERM
8. GEO. 2.

BOULBEE against OSBORNE.

Derbyshire, 12th May 1735.

The pretended
custom in the
parish of *Brailsford*, in *Derbyshire*, that the
inhabitants of
any parish in the
hundred of *Appletree*, feeding
barren cattle on
any lands in that
parish, are ex-
empted from the
agistment tithe
thereof, is ille-
gal and void.

THE rector of *Brailsford*, in the county of *Derby*, claimed all the tithes, both great and small arising in the parish, and particularly the tithe of the herbage on which all dry, barren, and unprofitable cattle are fed and depastured.

The defendants said, that the said parish lies in the hundred of *Appletree*; and that by immemorial custom all inhabitants, living in any parish within the said hundred and occupying lands in tillage, pasturage, or feeding lands in the same parish where they reside, are exempt from the payment of tithe for pasturage of any such persons cattle kept and fed by him, her, or them, on any such pasture or feeding lands.

THE COURT, upon full debate of the matter, declared the custom to be void and illegal, and therefore over-ruled the same, and ordered the defendants to account for the tithe of the agistment

agistment of all the dry, barren, and unprofitable cattle which they had respectively kept or depastured on their respective lands in the said parish during the time demanded by the bill; and the deputy's report, dated the second day of *August* last, was, on the eleventh of *November* 1742, ratified and confirmed with costs.

BOULDER
against
OSBORNE.

LAW. CARTER.
JAS. REYNOLDS.
THOS. ABNEY.

UNDERHILL *against* SPRIGG.

EASTER TERM,
8. GEO. 2.

Northamptonshire, 5th May 1735.

THE lessee of the prebendary of *Bricksworth*, in the county of *Northampton*, stated, that the defendants for two years past had laid down a great part of the ancient arable lands, contained in the five yard lands and an half, and had sowed the same with grass seed, and made the produce thereof into hay; the tithes of which he now claimed.

The prebendary of *Bricksworth*, in *Northamptonshire*, is only entitled to 4d. a yard land, in lieu of tithe hay, excepting on the estate called *Wool Fitch Farm*.

The defendant *L. Sprigg* said, that he was owner and occupier of three yard lands; that the defendant, his son, was owner but not occupier of two half yard lands; and that he occupied the same. He admitted, that great part of the said yard lands were ancient arable land; that the tithes of corn and grain thereof had been paid in kind; and that he had laid down two acres of ancient arable land; but he denied, that he had sowed the same for hay, but said, that it was the usual course of husbandry there to leave some arable land unplowed to refresh, in order to make future crops of corn, and that some part of such land so laid down will sometimes produce hay; and both the defendants insisted, that no tithes in kind had ever been paid for the same; for that by immemorial custom there was payable fourpence for every yard land lying in the said parish, at *Lammas* yearly, or so soon after as demanded, and so in proportion for a greater or less quantity of land than a yard land, by every occupier of such land (except *Wool Fitch Farm*) to the prebendary, as a *modus* in lieu of the tithes of all grass cut and made into hay, yearly growing on such yard land, whether ancient meadow or ancient arable land; and they denied, that the said *modus* extended only to such ancient meadow as had, time out of mind, been mowed for hay; and said, that the said *modus* was called *hay silver*, and was always reputed to extend to the hay on the said ancient arable lands.

THE COURT, on reading the depositions of *J. Fox*, on his cross examination for the plaintiff; of *T. Smith*, *W. Rea*, and *J. Allen*,

UNDERHILL
against
SPRIGG.

J. Allen; and upon full debate, ordered the bill to be dismissed with costs.

JAS. REYNOLDS.
LAW. CARTER.
J. COMYNS.
WM. THOMPSON,

EASTER TERM
8. GEO. 2.

GLISSON *against* DREW.

Dorsetshire, 24th April 1735.

The rector of *Marnball*, in *Dorsetshire*, is only entitled to a *modus* of 2d. a cow yearly, in lieu of tithe milk.

THE rector of *Marnball*, in the county of *Dorset*, claimed the great and small tithes on *Marnball Farm*.

The defendant insisted, that the plaintiff was not entitled to the tithe of milk in kind, but to a *modus* of twopence for every milch cow in lieu thereof.

THE BILL, as to the tithes of milk, was dismissed with costs.

TRIN. TERM,
9. GEO. 2.

THE BISHOP OF ROCHESTER *against* LINSELL.

Hertfordshire, 23d June 1735.

The land owners of *Sawbridgeworth*, in *Hertfordshire*, are to set out the tithes of barley and oats in heaps and shocks, and not to first bind them into sheaves.

THE lessee of the dean and chapter of *Westminster* claimed the tithes of corn and grain belonging to the impropriate rectory of *Sawbridgeworth*, in the county of *Hertford*, and stated, that according to an immemorial custom in the said parish, all the occupiers of land sown with barley or oats within the said parish, after such barley or oats is cut, mowed, or severed, ought to bind up all such barley and oats in sheaves, and then to set forth the tithes thereof; and he prayed that the said custom might be established.

The defendant denied the custom as set forth in the bill, and insisted, that the plaintiff was obliged to take the tithes of barley and oats in heaps and stocks, and not bound up in sheaves.

An issue was directed to try the custom as stated in the bill.

The issue was accordingly tried by a special jury, and the jury found that there was no such custom and usage.

THE COURT ordered the bill to be dismissed, with costs, both at law and in equity.

SAVE, Widow, against WRATHER.

HILARY TERM
9. GEO. 2.

Yorkshire, 18th February 1735.

THE bill stated, that the plaintiff's late husband was, in his life time, legally instituted, &c. into the vicarage of *Kirkby Malzard*, in the county of *York*, and continued therein till his death; that, for time immemorial, or by some endowment, &c. the vicars there had, from time to time, received and taken all the tithes of hay and grafs, and all other tithes, both great and small, yearly, except the tithes of corn, wool, and lambs, and had also offerings, duties, and oblations, or some composition in lieu thereof, of the occupiers of land and the parishioners, as had been agreed on; that, for twenty years before his decease, the defendants had occupied farms and meadow grounds, on which they had hay, and other great and small tithes, to which he was entitled, but that they refused to pay the same, under several pretences. The bill therefore prayed a discovery and satisfaction for the same.

The plaintiff, as administratrix, of the vicar of *Kirkby Malzard*, in *Yorkshire*, claims the tithes of hay, and also other tithes, great and small, arising in the parish of *Kirkby Malzard*, in the hamlets of *Grewellthorpe*, *Azerley*, and *Malkley*, and on *Spring Hall Farm*.

The defendant *Wrather* admitted, that the plaintiff's husband was vicar; that he died in *September* 1732; and that she was entitled to receive all the tithes of hay, and other tithes, great and small, except as aforesaid, and all dues and oblations, or some composition for the same. He also stated, that four years before the said vicar's decease, he, the defendant, had occupied a messuage called *Spring House* or *Spring Hall*, and several acres of meadow and pasture ground, situated in *Grewellthorpe*, in the said parish; that he had also possessed several other closes in the said parish; that he had occupied three closes of meadow and pasture ground in *Azerley*, in the said parish for one year, and one close therein for thirteen years past; and that all the small tithes arising within the said township were a demise to *John Bartlett*, and paid to him and the plaintiff's husband; and therefore he insisted, that there was nothing due for the same in *Azerley*. As to his tenements in *Kirkby Malzard*, he said, that he had yearly paid to the plaintiff's husband all the tithes that were due for the same. As to the messuage and tenement at *Grewellthorpe*, he admitted, that he had, in every year that he occupied the same, cut the meadow ground and made the grafs thereof into hay, and inned the same, but knew not the quantities and values of such hay, or the tithes thereof; and he set up a *modus* of six shillings and eightpence, payable for the said tithes, which, he said, he had offered to the vicar, but that he had refused to receive the same, and had filed his bill in this court against several of the parishioners; that the parishioners answered the bill; that the vicar declined going on with the suit, and accepted the said *modus*; and that therefore he was not accountable to the plaintiff for the tithes of

The defendant sets up a *modus* of 6s. 8d. a-year in lieu of tithe hay, and says he paid the intestate all his tithes.

SAVE
against
WEATHER.

of hay for *Grewellthorpe*, whilst her husband was vicar. The defendant further alledged, that whilst he occupied the said tenements he had duly paid her husband all the small tithes and vicarial dues, but that he could not set them forth, he having paid them after the following rates, viz. for a foal, sixpence; a new calved cow, three halfpence; a stript milked cow, one penny; and five calves, five shillings; more than five and under thirteen calves, ten shillings; and an hen, sixpence; and averred, that he was not indebted to her or her husband at his decease, in any sum whatever, on account of any tithes or composition in lieu thereof; and he insisted on the said *modus* for tithe hay in *Grewellthorpe*.

The defendant *Buck* put in the like answer, and set forth the lands and titheable matters he held in the parish of *Kirkby Malzard*, and in the hamlets of *Grewellthorpe* and *Milkley*, and set up the said *modus* of six shillings and eightpence, in lieu of tithe hay in the said hamlets or township; and said, that the same was payable at *Martinmas*.

Both the defendants denied, that any part of the lands, occupied by them, had been, within time of memory, barren or waste ground, and since improved and converted into meadow, or that tithes in kind of hay had been due for the same.

The cause heard.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on behalf of the plaintiff, and no one appearing for the defendants; and reading an order, dated the fifth of *December* last, whereby they undertook to appear gratis at the hearing, and reading the answers;

The tithes demanded decreed to be paid.

THE COURT ordered the defendants to account to the plaintiff (as administratrix to her husband) for the value of all titheable matters and things which they had arising, &c. within the said parish of *Kirkby Malzard*, and the titheable places thereof, during the time demanded by the bill, unless cause were shewn to the contrary.

TRIN. TERM,
11. GEO. 2.

SAVE, Widow, against RAYNARD.

Yorkshire, 5th July 1737.

The plaintiff demands the tithes arising in the hamlets of *Larton*, *High Miffes*, and *Low Miffes*, in the parish of *Kirkby Malzard*, in *Yorkshire*.

THE plaintiff, as administratrix of her husband, the late vicar, filed her bill against the defendants for the tithes of the parish of *Kirkby Malzard*, in the county of *York*.

The defendant insists on a *modus* of 5s a-year payable at *St. Martin*, to the vicar of the said parish, in lieu of tithe hay for the said hamlets and the ancient inclosed lands thereof.

The defendant *Raynard* answered as in the former cause, and set forth the lands he occupied within the hamlets of *Larton*,

other wife

otherwise *Laverton*, *High Misses*, and *Low Misses*; and insisted on a *modus* of five shillings in lieu of tithe hay in kind, for the lands he held in *Larton*, payable yearly to the vicar of *Kirkby Malzard*, at the feast of *Saint Martin*; and the like *modus* of five shillings for the lands in the *High Misses* and *Low Misses* and the ancient inclosed lands.

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against
RAYNARD.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon the hearing, the plaintiff's counsel objected, that the *moduses*, as set out in the answers, were uncertain; the defendant's counsel contended, that the *moduses* were stated with sufficient certainty; and the plaintiff's counsel replied.

Objection that the *modus* is not stated with sufficient certainty.

The reading the deposition of *John Wood*, taken on the behalf of the defendant *Raynard*, was refused by the Court, because the said *John Wood* proved another *modus* than what was alleged in the answer.

The deposition of *J. Wood* not read because it proved a different *modus*.

THE COURT, on reading the other depositions, ordered *Raynard* to account with the plaintiff for the tithe hay, and other tithes arising, &c. on the lands by him occupied in the parish, during the time demanded by the bill; and made a decree *nisi*, against the defendant *Plumpton*.

The defendant decreed to account.

The defendant *Raynard* had filed a cross bill, to establish the said several *moduses*, against the plaintiff and the vicar of the parish.

The defendant files a cross bill;

By an order, dated the third of *December* last, upon the petition of *Raynard*, and upon his making the usual deposit with the deputy remembrancer, the original cause was ordered to be reheard; and by a subsequent order, dated the thirty-first of *January* last the cross cause was ordered to come on to be heard at the same time; and the two causes now came on to be reheard together, when

and obtains a re-hearing on the original bill.

Both causes ordered to come on together.

MR. BUNBURY objected to the cause of *Raynard v. Save* being opened, as it was not properly a cross cause; but on reading an order, made the first instant, that the cross cause should come on to be heard at the same time that the original cause was heard, and that the depositions taken in the original cause should be read in the cross cause, against the defendant *Save*, saving all just exceptions, the cross bill and the answer to it were opened, when MR. BUNBURY offered to object to the legality of the *modus*, without admitting the fact of it, but MR. BOOTLE and MR. WILBRAHAM, as counsel for *Raynard*, in the cross cause, objected to his so doing.

Objection that the defendant's bill is not properly a cross bill.

MR. BUNBURY, as counsel for the defendant in the cross cause, then objected that the cross bill was defective for want of

It is objected that the impropiator ought to have been made a party.

SAVE
against
RAYNARD.

of proper parties, for that the impropiator ought to have been brought before the court; that the plaintiff was not a proper person to establish a *modus*; and that it was not said to be "on behalf of himself, &c."

The Court being
of that opinion,
both bills are
dismissed.

THE COURT was of opinion, that the impropiator ought to have been made a party to the original bill; and ordered both the bills to be dismissed with costs; and that the deputy should repay *Raynard*, or his solicitor, the ten pounds which had been deposited with him, pursuant to the order of the third of December.

TRIN. TERM,
12. GEO. 2.

SAVE, Widow, against LODGE.

Yorkshire, 28th June 1738.

The plaintiff
claims the tithes
of *Kirkby Mal-*
lard, Ray Park,
Readings, Cleave,

THE plaintiff, as administratrix of her husband, filed her bill against the defendant for the same demand of tithes in the said parish of *Kirkby Malzard*, in the county of *York*.

Readings, Cleave, Morphy Gates, Low Closes, Grewellthorpe, Lagrams, and Whitelands.

The defendant
says, that *Ray*
Park was parcel
of the abbey of
Fountains, and is
tithe free;

The defendant admitted, that the plaintiff's husband was in his lifetime vicar of the said parish; that he had been so for twenty-eight years; and was entitled to the tithes of hay and other vicarial tithes as his predecessors had been; and that he, the defendant, during that time, had been owner and occupier of several closes, containing ninety-three acres in the said parish, called *Ray Park*, &c. and also of several other closes called *Readings, &c.*; but he denied, that she was legally entitled to the tithe hay or other titheable matters arising on the said ninety-three acres, called *Ray Park*, or to the tithe of hay arising on the said closes called *Readings, Cleave, Morphy Gates, or Low Closes*; for that the ninety-three acres formerly belonged to the *Abbey of Fountains*, one of the greater abbeys, and were held discharged from the payment of tithes at the time of the dissolution of the said abbey, and had never since paid any tithes whatever, or any thing in lieu thereof, to the vicars of the said parish; that the closes called *Readings* and *Cleave* and other lands there, were situated in the township of *Grewellthorpe*, and for tithe hay arising therein, he set up the said *modus* of six shillings and eightpence (as in the former cause) payable in lieu thereof, and averred that the same had been paid to the plaintiff's husband and to herself up to the year 1732. As to *Morphy Gates* and *Low Closes*, he said, that nothing was due to the plaintiff for tithe hay for the same, she and her husband having been fully paid for the same. And as to the closes called *Lagrams* and *Whitelands*, he said, that he was ready to pay the value of the tithes for the same.

that *Readings*
and *Cleave* are
in *Grewellthorpe*,
and that there is
a *modus* of 6s. 8d.
a-year, in lieu of
the tithes there-
of;
that he had paid
the tithe hay for
Morphy Gates and
Low Closes in full;
and that he was
ready to pay the
same for *Lagrams*
and *Whitelands*.

The

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and the master, fellows, and scholars of *Trinity College, Cambridge*, having been made defendants to the bill, the plaintiff charged, that they, as impropiators of the said parish, claimed tithe hay arising therein; but which they, by their answers, disclaimed; and on reading the defendant *Lodge's* answer, and a roll produced and proved of the records in his majesty's *Tower of London*, dated the fifth of *March*, in the ninth year of *Richard the Second*, containing *King Edward the Third's* and *Richard the Second's* confirmation of a grant of several lands granted in fee by *King Richard the First*, to the abbot and convent of the said monastery of *Fountains*, in the said city; a survey; the minister's accounts of the lands and possessions belonging to the said abbey, from the augmentation office; three receipts from *P. Save*, for the six shillings and eightpence, in full of tithe hay arising in the said township of *Grewellthorpe*, dated the eleventh of *November 1708*, eleventh of *November 1730*, and eleventh of *November 1731*, and one from the plaintiff of the tenth of *February 1732*, and reading the depositions of several witnesses,

THE COURT ordered the master, &c. of *Trinity College*, to be dismissed with forty shillings costs; that as to the plaintiff's demands on *Lodge*, for the tithes arising on the lands mentioned to belong to the *Abbey of Fountains*, and the tithe hay arising on the closes called *Readings, Cleaves, Morphy Gates, and Low Closes*, the bill be dismissed with costs; and that the defendant do account for the tithes arising on the closes called *Lagrams* and *Whitelands*, and on *Springhall Close*; the consideration of costs as to the tithes arising on the said closes to be reserved till after the report.

FANE against SOUTHWELL; et è Contra.

Gloucestershire, 20th May 1736.

THE bill stated, that the plaintiff had been ever since the year 1726, and then was seised in fee of the rectory impropriate of *Henbury*, in the county of *Gloucester*, and entitled to all the rectorial tithes therein; to a certain portion of the tithes of corn and hay in *Cook's Marsh*; to all the tithes of corn, grain, and hay, in the tithing of *King's Weston*, in the said parish; and, by virtue of a lease from the vicar, dated the seventeenth of *April 1731*, to the vicarial tithes of the said parish; and therefore, as impropiator and lessee of the vicar, he prayed a discovery and satisfaction against all the defendants, for all vicarial tithes, and against the defendant *Bracey*, for both great and small tithes, for the years 1731 and 1732.

The

SAVE
against
LODGE.

The impropiators having been made defendants disclaim all right to the tithes of hay.

The evidence read.

The impropiator dismissed with costs.

The bill dismissed as to the tithes for *Roy Park, Readings, Cleaves, Morphy Gates, and Low Closes*. The tithes of *Lagrams, Whitelands* and *Springhall Close*, decreed.

EASTER TERM
9. GEO. 2.

The plaintiff, as impropiator of *Henbury*, in *Gloucestershire*, claims all the great tithes of the parish; a portion of the tithes of corn and hay in *Cook's Marsh*; all the tithes of corn and hay in *King's Weston*, and, as lessee of the vicar, to all the small tithes of the parish.

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against
SOUTHWELL;
at & Contra.

The defendant

The other defendants insist on *modus*es in lieu of small tithes.

The defendant *Bracey* insists on a *modus* of 1s. 4d. an acre, in the tithings of *Redwick* and *Northwick*, and 2s. an acre in the tithing of *Storwick*, in lieu of *grafs* to be made into hay;

and says, that he was under a composition for his tithes; and that he had carried away his hay before the plaintiff gave notice of his intention to take his tithes in kind.

The plaintiff, by a *supplemental bill*, insists, that by the custom of the parish the parishioners are bound to make the *grafs* into dry hay, and then to set out the tithes, and that he is not obliged to take them in *grafs* cocks.

The defendant *Southwell* insisted, that no tithe for the after-pasture, hay, or *grafs* was due to the vicar or to his lessee, for the lands in the tithing of *King's Weston*.

Southwell says, no tithes are payable in *King's Weston* for hay and after-pasture.

The other defendants insisted on several *modus*es, in lieu of several of the vicarial tithes.

The defendant *Bracey* stated, that in the years 1731 and 1732, he had no titheable matters in the parish of *Henbury*, save in the tithings of *Redwick*, *Northwick*, and *Storwick*, part of which lands were his own property, and part he rented, and that he had compounded with the plaintiff for the rectorial tithes of his own lands, and for the school land, and that he had paid him for the same, to the end of the year 1731; and insisted, that in the tithings of *Redwick* and *Northwick*, there was a *modus* of one shilling and fourpence an acre, payable to the impropriator or vicar, in lieu of the tithes of *grafs*, to be made into hay; and in the tithing of *Storwick* a *modus* of two shillings an acre, in lieu of the tithes of *grafs* to be made into hay. He also said, that he had had no notice, until the filing of the bill, that the plaintiff meant to discontinue the said agreement and method of tithing; and that, before the said notice, he had carried away the hay which he made on his own land, in the year 1732, and insisted, that he ought not to be charged for the tithes of his hay, wheat, or pease, in kind, but only for the value thereof, according to the agreement.

The plaintiff filed a *supplemental bill* against *Southwell*, and made the defendants *Washbrough* and others, parties thereto; and stated therein, that the occupiers of lands within the said parish and the titheable places thereof, had, by immemorial usage and custom within the said parish, always set out the tithes of hay when taken in kind in dry hay, made by the occupiers, and not in *grafs* cocks; that he and his ancestors, impropriators of the rectory, or their lessee, had always taken the tithes of hay in dry hay, or some composition in lieu thereof; that his ancestors had generally compounded for the tithes of hay, but that they sometimes took them in kind, and that then they were set out and received in dry hay, and not in *grafs* cocks; that he had, at times, compounded with the parishioners until the year 1732; that in that year he took his tithes in kind, and that they then set out the tithes of hay in dry hay, and not in *grafs* cocks; that he, in 1733, intended to take his tithes in kind; that the defendants gave him notice, that they would set out their tithes of hay in *grafs* cocks, and not in dry hay; that they did so accordingly, and refused to make the same into dry hay; and therefore he prayed, that the defendants may set forth the quantities of hay which they had, and the values thereof, and account for the tithes; and that the said custom of paying the tithe of hay in dry hay may be established.

The

The defendant *Wafborrow* and others denied the custom, and insisted, that neither the plaintiff, nor his ancestors, had ever received the tithes in the manner stated in the bill, but that the satisfaction which had been made to the impropriator, was not for the tithes of hay, properly speaking, but for the tithes of grass not made into hay by the occupiers, but by the impropriator or his agents. They admitted, that in the year 1732, the plaintiff had taken the tithe in dry hay from some poor parishioners who were unable to contest the matter with him, but that they had in the year 1733, refused to set out the same in dry hay, in order that the custom, stated in the bill, might be tried; and they set forth the quantities and values of their tithe hay; and admitted, that they might, inadvertently, in the year 1732, have set out their tithes in dry hay.

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against
SOUTHWELL;
et c. Contra.

The defendant *Wafborrow* denies the custom, and says, that the parishioners are to set out their tithes of grass in grass cocks, and that the impropriator is to make them into hay.

The defendant *Southwell* also denied the custom of paying the tithe in dry hay made by the occupiers; and stated, that the plaintiff's ancestors had generally compounded for the tithes, but had sometimes taken them in kind; that then some of the parishioners had set out their tithes in grass cocks, and some in dry hay; and that the tithes were accepted as they were set out. He also stated, that the plaintiff had compounded with all the parishioners for their tithes till the year 1732; that in the said year he insisted on tithes in kind; that most of them then set out their tithes in dry hay, but that the plaintiff did receive some of the said tithes in grass cocks; that in the year 1733, many of the inhabitants set out the tithe of hay in grass cocks, and refused to set out the same in dry hay; and that the plaintiff's agent had received from some of the parishioners the said tithes in grass cocks; and he insisted, that none are obliged to set out their tithe hay in dry hay, but in grass cocks; that the plaintiff ought to take the same in grass cocks only; and that those parishioners who had set out the same in dry hay had done so in their own wrong; and he averred, that in the year 1733, he had not mowed any grass in the said parish, except in the tithing of *King's Weston*, for which he insisted no tithes were due.

The defendant *Southwell* also insists that he is not bound to set out his tithes in dry hay, but in grass cocks only; Hob. 250.
2. Peer. Wms. 523.
3. Burn's E. L. 441.
Anst. 481.

and that no tithes are due for *King's Weston*.

The plaintiff filed a special replication to the original and supplemental bills, and thereby waived all demand of vicarial tithes, under the lease from the then vicar of the parish; and the defendants rejoined.

The plaintiff, by special replication, waives his demand for small tithes.

The defendants *Wafborrow* and others filed a *cross bill* against the plaintiff and others, to establish the following *modus*, in the tithings of *Henbury*, *Stowick*, *Redwick*, *Northwick*, and *Lawrence Weston*, in the said parish of *Henbury*, in lieu of vicarial tithes, viz. twopence a-year at *Easter*, for the *Easter* offering of every householder; twopence for his wife; and twopence for each of his household

The defendants, by a cross bill, insist on several *modus* in lieu of *Easter* offerings, and the tithes of fruit, cows, milk, butter, cheese, and calves in the *Weston*;

tithings of *Henbury*, *Stowick*, *Redwick*, *Northwick*, and *Lawrence*

FANE
against
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et c. Contra.

and the same in
the tithing of
Compton Green-
field;

and that in Com-
pton Greenfield there
is a modus of 1½d.
a cow, in lieu
of milk; and a
half modus for
calves.

The impropria-
tor admits that
there may be
modus for small
tithes.

The vicar denies
the modus as to
Easter offerings
and fruit;

admits the modus
as to ancient
gardens, cows,
and calves;

servants, which do, or ought to receive the communion, to be paid in *Easter Week*; one penny, for an ancient orchard, yearly at *Easter*, in lieu of the tithes of all the herbs and fruit thereof; threepence for every milch cow depasturing there, for the tithe milk of every such cow, at *Easter*, and that such person is not to pay otherwise any tithes for milk, butter, or cheese; that if any person shall have fallen there, in any one year, seven calves, the vicar to have one calf and pay back to such person three halfpence; and if eight calves, to have one calf, and pay back one penny; and nine, to have one, and pay back one halfpenny; and if ten, to have one without payment; that if any one have but six calves, or under six, the owner is only to pay one halfpenny at *Easter* for each calf. It also stated, that in the tithing of *Compton Greenfield*, in the said parish, there are the several *modus*es following, in lieu of vicarial tithes, viz. that every occupier of land in the parish of *Compton Greenfield*, which parish adjoins to *Henbury*, holding other lands also in the said tithing of *Compton Greenfield* (excepting the occupiers of certain lands, formerly belonging to *Mr. Mallet* and *Mr. Cople*), ought to pay at *Easter*, to the vicar of the same parish, such yearly offerings, and such penny for each orchard and garden respectively, in the same tithing of *Compton Greenfield*, as before mentioned; that such person ought also to pay the same vicar, at the same time, at *Easter* yearly, three halfpence only for the tithe of milk of every such cow lying and feeding within the said tithing; and also for every calf one half, or half the value of what is payable to him by custom aforesaid, on account of calves within the said several other tithings above mentioned; and they prayed that an issue might be directed to try the validity of the said *modus*es.

Fane, the impropriator, answered the cross bill and said, that he was a stranger to the several *modus*es stated in the bill; that he believed there are ancient *modus*es, which have been paid for many years, but whether for time immemorial, or without any legal interruption he knew not; and denied, that he insisted there are not any such *modus*es, or any others subsisting in the said parish, or that he had endeavoured to destroy the same, otherwise than by his original bill; and he insisted on the custom respecting the tithe hay. He admitted, that he had leased the vicarial tithes of the defendant *Gardener*.

The defendant *Gardener*, the vicar of the parish, denied the *modus* of twopence for *Easter* offerings, as stated in the bill, and said, that one shilling for each householder and his family, had been generally paid, for many years past, as appears by his books, but that the payment for the same had differed. He also denied the *modus* of one penny for an ancient orchard, and insisted on the tithes of fruit in kind. He admitted the custom of paying one penny for the tithes of herbs and fruits growing

growing in *ancient gardens*; of paying threepence for each cow; one calf in seven, eight, nine, or ten, but knew nothing of paying any thing back to the owner, or that one halfpenny had constantly been paid for each calf under the number of seven, but said, that he believed one penny had frequently been paid for the same. He denied, that the inhabitants of the parish of *Compton Greenfield*, holding lands in the tithing there, ought to pay three halfpence only for each cow, and also half for each calf of what is payable in the other tithings; and insisted that such custom is void, and contrary to justice.

The defendant the *Bishop of Bristol*, the ordinary, and the defendant *Smith*, who with the defendant *Edwards*, were entitled to the perpetual advowsonage of the said church, and who presented the defendant *Gardener* to the vicarage thereof, by their answers said, that there might be such *modus*, as stated in the bill, but not knowing the same, they do not admit that there are such, and submit the same to the court.

The plaintiffs replied to the answers of *Fane* and *Gardener*; they rejoined; and several witnesses were examined in both causes on both sides: and now upon hearing counsel for all parties; and the defendant *Gardener's* counsel admitting for him, as vicar, the several *modus* of one penny for every ancient garden, in lieu of the tithes of herbs and fruit; and of threepence for every cow, in lieu of tithe milk, as severally laid and alleged in the cross bill; but controverting the *modus* of tithe milk in the tithing of *Compton Greenfield*;

THE COURT ordered an issue to try before a special jury, "Whether, or not, there hath been an immemorial custom or usage within all the parish of *Henbury* (except *Cook's Marsh* and the tithing of *King's Weston*) for the occupiers of land in the said parish, except as aforesaid, to set out the tithe of hay when taken in kind, in dry hay made by such occupiers?"

THE COURT decreed, that the *modus* of one penny for every ancient garden, in lieu of the tithes of herbs and fruits, and threepence for every cow, in lieu of tithe of milk, butter, and cheese, within the several tithings of *Henbury*, *Stowick*, *Redwick*, *Northwick*, and *Lawrence Weston*, they being admitted by the defendant *Gardener*, be confirmed and established.

The Court ordered issues, as to the *Easter* offerings and the several other *modus* and customary payments in the cross bill mentioned.

The costs, and all further directions, to be reserved till after the trials shall be had.

A trial was accordingly had on the custom of setting out the tithe hay, in which a verdict was given for *Fane*; and the plaintiff's

B b 2

FANE
against
SOUTHWELL;
et à *Contra*.

but not as to the milk and calves in *Compton Greenfield*.

The ordinary of the diocese and the owner of the advowson submit their interests to the care of the Court.

The causes heard.

The vicar admits the *modus* in lieu of herbs, fruit, and cows,

excepting that in *Compton Greenfield*.

An issue directed to try, whether the farmers of *Henbury* are to set out their tithes in dry hay or in *grass cocks*.

The *modus* of 1d. for an ancient garden, and 3d. a cow, decreed.

An issue directed, as to the other *modus*.

The costs reserved.

The jury find, that the tithes are to be set out in dry hay;

FANE
against
SOUTHWELL;
et d. Contra.

and as to the other disputed *modus*es the parties come to an agreement.

The Court decrees the tithes of hay, except in *Cook's Marsh* and *King's Weston*;

and order the defendants to account for tithe hay accordingly. The *modus*es of 1s 4d and 2s. in lieu of tithe hay disallowed. The cross bill dismissed with costs, as to the tithe hay.

The small tithes decreed pursuant to the agreement between the parties;

and the several *modus*es established;

except as to the tithe milk and calves in *Compton Greenfield*.

counsel, in the cross cause, informing the court, that the parties did not proceed to trial on the *modus*es set up in the cross bill, but that they had come to an agreement with the vicar touching all their demands by the bill.

On the eleventh of November 1736, upon reading the decree and the verdict for the tithe hay; and on hearing counsel for all parties;

THE COURT decreed, that the immemorial usage or custom within all the said parish of *Henbury*, excepting *Cook's Marsh* and the tithing of *King's Weston*, for the occupiers of land in the said parish, except as before excepted, to set out the tithe of hay, when taken in kind, in dry hay, made by such occupiers, be confirmed, established, and observed for the future in the said parish; THAT the defendants to the *supplemental bill* do account for the tithe of hay according to the said custom, with costs at law and in this court on the said *supplemental bill*; THAT the defendant *Brassey* do likewise account for the rectorial tithes as demanded by the *original bill*, with costs, for and in respect of the said great tithes; THAT the *original cause* be continued in the paper till after the report; AND THAT the *cross bill* as to the defendant *Fane* be dismissed, with costs, for and in respect of tithe hay, and without costs, as to all other matters.

As to the defendant *Gardener*, the vicar of *Henbury*, the counsel, as well on the part of the plaintiffs in the cross cause, as of the defendant, consenting and admitting that there were in the tithings of *Henbury*, *Stowick*, *Redwick*, *Northwick*, *Lawrence Weston*, and *Compton Greenfield* in the said parish, the several *modus*es of one penny, payable yearly at *Easter*, for every ancient orchard, to the vicar, as a *modus* for all manner of fruits arising thereon; and the custom of tithing calves in the said tithings of *Henbury*, *Stowick*, *Redwick*, *Northwick*, and *Lawrence Weston*; and also the *modus*es payable in the tithing of *Compton Greenfield*, of one penny for every ancient orchard; and one penny for every ancient garden, in lieu of tithe fruit and herbs, as in the said cross bill is mentioned; and the said plaintiffs waiving the trial at law, IT IS ORDERED BY THE COURT, by the consent of the plaintiffs in the cross cause, and the defendant *Gardener*, the vicar, as far as in them lies, that the same be confirmed and established; and by the like consent that the cross bill, as to offerings throughout the said tithings, and as to the *modus*es of tithe milk and calves in *Compton*, be dismissed as against the said defendant, without costs; and that each party, in all other respects, shall pay his own costs.

JA. REYNOLDS.
LAW. CARTER.
WM. THOMPSON.
WM. FORTESCUE.
COLCHESTER

COLCHESTER *against* RUSSELL.EASTER TERM
9. GEO. 2.*Gloucestershire, 27th May 1736.*

THE plaintiff was an inhabitant and occupier of lands in the parish of *Westbury*, in the county of *Gloucester*, and the defendant was vicar of the said parish. The object of the bill was to establish the following *modus*, FIRST, one penny for every ancient garden, at *Easter* yearly, or so soon after as demanded. SECONDLY, one penny for every milch cow kept and depastured therein, at *Easter* yearly, in lieu of tithe milk of such cow. THIRDLY, one halfpenny for every calf, weaned and bred up in the parish, in full for the tithe of such calf. FOURTHLY, fivepence a pipe for all fruit made into cyder, and so after that rate for a greater or less quantity.

The vicar of *Westbury*, in *Gloucestershire*, is only entitled to 1d a-year for every ancient garden, in lieu of tithe fruit and herbs; to 1d for every cow in lieu of tithe milk; and to 5d. a pipe of cyder, in lieu of the tithe of the apples of which it is made; but he is entitled to the tithes of calves in kind.

The vicar denied the *modus*, and insisted on tithes in kind.

THE COURT dismissed the bill with costs, as to the *modus* for every calf weaned and bred up in the said parish.

As to all the other *modus*, issues were directed to try the same as laid and alledged in the bill.

The validity of the three several *modus* was accordingly tried by a special jury, and a verdict was found for the plaintiff; but on the ninth of *November* 1736, the Court directed a *new trial*, on the first and third issues, upon payment of costs.

THE COURT established and confirmed the *modus* of one penny for every milch cow depastured in the parish, in lieu of the tithe milk of such cow, and ordered, that the same be observed in the said parish.

A new trial was accordingly had, on the first and third issues, and another verdict given for the plaintiff.

The Court thereupon confirmed and established the *modus* for the garden, and the pipe of cyder, as laid and alledged in the bill; and ordered that the same be, for the future, strictly observed in the said parish.

STEERS, Widow, *against* BRASSIER.TRIN. TERM,
10. GEO. 2.*Kent, 21st July 1736.*

THE bill stated, that the plaintiff's husband was seised in fee of some part or share of the rectory of *Westerham*, in the county of *Kent*, and of all the tithes of corn and grain arising

titled to the tithes of tares cut green, and given to cattle, or cut green and harvested, and made into winter fodder in the nature of hay.

The impropriator of *Westerham*, in *Kent*, and not the vicar, is entitled to the tithes of tares cut green, and given to cattle, or cut green and harvested, and made into winter fodder in the nature of hay.

B b 3

upon

STEEPS
against
BRASSIER.

upon the farm called *Court Lodge Farm* (a); and that being so seised, in April 1731 he made his will, and devised to the plaintiff his interest therein; that he soon afterwards died; and that she had thereby become entitled to the said tithes of corn, and had ever since his death taken the same in kind, or received some composition in lieu thereof, except for the tithes of tares as hereafter set forth; that the defendant *Brassier* had, for several years past, occupied several acres of the said farm; that he had sowed part thereof with tares or vetches, and had cut some of them green and carried them off to feed his horses with; that he had cut the other part, and made the tares into dry and winter fodder, but had not set out the tithes thereof, or compounded for the same. The bill therefore prayed a discovery of the number of acres he had sowed with tares; how many he had cut green and carried off to feed his cattle with; and how many he had cut and made into dry winter fodder; and what the value of the tithes thereof amounted to; and that the defendant *Lewis*, the vicar, may set forth whether he claimed any and what right to the tithes of the said tares.

See *Hodgson v. Smith*, ante, 21.

The defendant *Brassier* said, that he occupied several acres of land part of *Court Lodge Farm*, and had sowed the same with tares, part of which he had cut green to feed those cattle with which he kept for the plough; and that he had not set out the tithes thereof, because no tithes of tares when cut green to feed cattle of the plough with had ever been paid or demanded in the parish; that he had cut the residue of the said tares, and

(a) In Hilary Term, 4 Geo. 2. the cause of *Walraven v. Baskett* and others came before the court. The bill stated, that *T. Weymark*, deceased, was, at his death, seised in fee simple of lands part of *Court Lodge Farm*, and of the tithes of corn and grain yearly growing thereon; that on the 29th of August 1711, he made his will, and devised to the defendants, his three grandchildren, the several estates in the parish of *Westerham*, called *Conyard Hill*, *Lambpitt Fields*, *Park Field*, *Hop Garden Field*, *the Upper Legge*, *Mosland Coppice*, and *Skipyard Fields*, to hold to them, their heirs and assigns, equally; that he also devised to the plaintiff, *Mercy Weymark*, his daughter, and her heirs, all his other estates; that he died in November 1711; and that the plaintiff, who had married *Mercy Weymark*, was thereby become entitled to the tithes of corn and grain arising on *Court Lodge Farm*; and prayed that the defendants might account for the same. The defendants

admitted the seisin of the testator; that he had made his will, and devised the lands as stated in the bill; but they denied, that the plaintiffs were entitled to the said tithes, because, as the testator was seised of the said lands and tithes, the tithes had either merged by unity of possession, or had passed to them, the defendants, by the testator's will.—The Court ordered the bill to be retained, and gave the plaintiffs liberty to bring an ejectment against the defendants to try their right to the tithes. An ejectment was accordingly brought; and, after a very long hearing, a verdict was given for the plaintiffs. The Court, on the cause coming on for further directions, decreed, that the plaintiff's right to the tithes be established; that the defendants should pay the costs at law only; and that they should account for the tithes of all the corn and grain which had arisen on their lands lying in the said parish.

had

had made them into dry fodder in the nature of hay ; that he had set forth the tithes thereof, and had given the plaintiff notice thereof, but that she had refused to take the same away ; and that the vicar, he believed, took them away. He denied that he had ever pretended that the tithes of tares in the parish belonged to the vicar ; and said, that he had never known that tares cut green, and harvested, and made into dry fodder, had paid tithes, or that the same had ever been demanded by the impropriator, or that any payment had been made in lieu thereof.

STEELE
against
BRASSIER.

The defendant *Lewis* said, that he had been vicar of the parish for twenty-nine years past, and was, as such, entitled, by an endowment, to all small tithes, and to the tithes of hay ; and that if any tithes were due for tares cut green, the same belonged to him, they being in the nature of herbage or agistment tithes ; and being endowed with the tithes of hay, he was also entitled to the tithes of tares cut and made into winter fodder.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined, except on the part of the vicar ; and upon hearing counsel, and on full debate ;

THE COURT ordered *Brassier* to account for the value of the tithes of those tares which he had cut green and fed his cattle with ; and *the vicar* to account for the value of the tithes of the tares which *Brassier* had cut and made into dry winter fodder, and which the vicar had carried away ; the defendants to pay the plaintiff her costs.

But see *Hayes v. Dowse*, Bunb. 279. and *Collyer v. Howse*, Anst. 481.

The deputy reported, that there was due from *Brassier* eight shillings for tares cut green, and from the vicar sixteen shillings for the tares he had carried away ; and on the sixteenth of June 1737, the report was ratified and confirmed.

JA. REYNOLDS.
LAW. CARTER.
WM. THOMSON.
WM. FORTESCUE.

FLETCHER against RYE.

TRIN. TERM,
11. GEO. 2.

Northamptonshire, 4th July 1737.

THE vicar of *Blakeley*, in the county of *Northampton*, claimed the vicarial tithes of *Kirby Fields* and *New Close* for the year 1731, and stated the cause of *Pettifer v. Yeoman* in the year 1698

The vicar of *Blakeley*, in *Northamptonshire*, is entitled to the small tithes of *Kirby Fields* and *New Close* in kind.

(small tithes of *Kirby Fields* and *New Close* in kind.

B b 4

for

FLETCHER
against
Rye.

for the tithes of the same lands, on which a trial was had, and the tithes were decreed (a).

The defendant *Colman* said, that he had, for several years past, rented part of *Kirby Homeward Field* and *Kirby Holm*, which were called *Kirby Fields*, the *New Close*, the *Horse Close*, and the *Netter Holme* or *Kirby Holme*; that the said *Kirby Holme* and *Kirby Field* were part of the estate of the dissolved hospital of *Saint John of Jerusalem*, and as such by law exempted from the payment of tithes.

The defendant *Rye* said, that he had been seised in fee of a close of pasture, called the *Upper Ground*, a spiny or coppice wood and a close, called the *Stripe of a Lane* and the *Spare Ground*, the same being part of *Kirby Homeward Field*, and also of *Ram Close* and *Man Mead*, divided into three parts, all which he owned were part of *Kirby Fields*, and insisted that they were part of the possessions aforesaid, and as such exempted from the payment of tithes.

The other defendants put in the like answer, and said that they were tenants to the defendant *Rye*.

The plaintiff's counsel, on the hearing of the cause, objected, that the exemption or discharge from tithes insisted on by the defendants was not fully and rightly laid; and the plaintiff's title being admitted by the defendant's counsel;

THE COURT, on reading the proofs, ordered the defendants to account for the vicarial tithes arising on *Kirby Fields* and *New*

(a) On the 4th of July 1699, Trinity Term, 11. Will. 3. *Pettifer*, then vicar of *Blakesley*, in the county of *Northampton*, filed his bill in the court of exchequer against *Yeomans*, claiming the tithes of *Kirby Fields* and *New Close*. The defendants admitted, that they were in possession of the said fields and close; and insisted, that the said lands were parcel of the possessions of the hospital and priory of *Ss. John of Jerusalem*; that on the dissolution of the said priory in 31. Hen. 8. the prior, or the prior and convent, were in possession of the said lands, and then held them tithe free; that the said lands had been held tithe free, while they remained in the hands of the crown, and in the hands of the patentees of the crown from the time of the said dissolution to the filing of the said bill; and that no tithes in kind, or any thing in lieu thereof, had ever been paid for them.—THE COURT, on reading a deed, dated the ninth of February 1693, between *J. Watts* and the plaintiff; an enrollment of a patent from *Queen Elizabeth* to *T. Watts*;

a pardon of alienation of Easter Term, in the twenty-second year of *James the First*; directed an issue upon the statute 2. & 3. *Edw. 6. c. 13.*; the only question on the trial to be, "Whether the grounds, called *Kirby Fields* and *New Close*, be discharged from the payment of tithes, or not." A trial was accordingly had, and the jury found, "that the said grounds are not discharged from tithes, but subject to the payment thereof." The defendant applied for a new trial, which was refused; the Judge who tried the cause being fully satisfied with the verdict; and the defendant, on the cause coming on for further directions, was, on the eighth of February 1699, decreed to account for the values of the tithes demanded by the bill. The deputy reported, that forty-four pounds, seven shillings, and tenpence, were due for the tithes of five years; and, on the twenty-fourth of October 1700, the report, without exceptions, was confirmed.

Close. The deputy made his report, dated the twelfth of July last, which, on the twenty-sixth of October 1738, was confirmed with costs.

FLETCHER
against
RYE.

MEREDITH against BLASHFIELD ; *et c* Contra.

TRIN. TERM,
II. GEO. 2.

Radnorshire, 27th June 1737.

THE rector of *Blethvaugh*, in the county of *Radnor*, claimed all the great and small tithes of *Monaughton Farm* and part of *Cocdy Myd Common*.

The owners of *Monaughton Farm*, in the parish of *Blethvaugh*, in *Radnorshire*, pay a *modus* of 10l. a-year, by half-yearly payments, at *Midsummer* and *Christmas*, to the rector of the said parish, in lieu of all tithes, great and small, arising on the said farm.

The defendant said, that he occupied *Monaughton's Messuage*, part of which lay in the parish of *Blethvaugh* and part in *Llan-guillo*; and he set up a *modus* of ten pounds a-year payable to the plaintiff in lieu of tithes, offerings, and oblations.

W. Chase, the landlord of the farm, filed his bill against *Meredith* and *Blashfield*, stating, that he was seised in his *demesne as of fee* of and in the lordship of *Blethvaugh*, and of the mansion-house called *Monaughton*, with the lands thereunto belonging; and that he had demised the same to the defendant *Blashfield*; and he set up the said yearly payment of ten pounds in lieu of all tithes in kind, oblations, and offerings, arising from the said messuage, lands, and premises, as payable by the occupier or occupiers thereof; and, averring that no tithe in kind had ever been paid for the same in the memory of man, prayed that the said *modus* might be established.

The defendant *Blashfield* admitted, that the *modus* had always been paid till the defendant *Meredith* refused to accept the same.

The defendant *Meredith* did not admit the *modus*; and said, that he had heard that the said sum had been paid to his predecessors; but that the ground called *Cocdy Monack* did not belong to *Monaughton*; and insisted, that tithes in kind ought to be paid for the same, as well as for the estate at *Monaughton*, and also for a parcel of land, called *Smith's Green*, lately inclosed and held by *Blashfield*.

THE COURT directed an issue, "Whether or not there is, and hath been, a custom beyond the memory of man, that all and every the occupier and occupiers of the capital messuage or tenement, and manor-house, called by the name of *Monaughton*, with such parts of the lands and grounds, with the appurtenances thereto belonging, as lie in the parish of *Blethvaugh*, have paid, or ought to pay, and, whether there hath been due and payable yearly, at or upon the twenty-fourth day of *June* and twenty-fifth of *December*, or so soon afterwards as the same has been demanded, to the rectors of the rectory of *Blethvaugh* aforesaid, or their lessee or lessees for

" the

MEREDITH
against
BLASHFIELD ;
at i Contra.

" the time being, the sum of ten pounds, and no more,
" by even and equal portions, for and in lieu of all tithes in
" kind, oblations, and offerings ; and, whether the said sum of
" ten pounds has been constantly, and time out of mind, taken
" and accepted by such rectors of the said rectory, their lessee or
" lessees for the time being, as a *modus* for and in lieu of all the
" tithes whatsoever, and all the oblations and offerings growing
" or arising from the said capital messuage, lands, and premises,
" or due or payable by the occupiers or occupier thereof ; and,
" whether no tithe in kind hath been paid for any matters
" arising upon the said premises within the memory of man ?"

The issue was accordingly tried, and a verdict, on full evidence, given, that there was and had been such *modus* paid and accepted in the manner as set forth and insisted on in the cross bill.

The causes came on for further directions on the twenty-eighth of June 1738 ; and upon reading the *posita* of the verdict, with the indorsement thereon relating to the common or pasture called *Cocdy Monack* having been fed and depastured by the cattle of other occupiers of land within the parish of *Blethvaugh*, as well as the occupiers of the said *Monaughton Farm* ; and on hearing counsel ; and on full debate of the matter ;

THE COURT ordered the original bill to be dismissed with costs ; AND THAT the *modus*, as herein before and in the cross bill set forth, be established, with costs both at law and in equity.

TRIN. TERM,
11. GEO. 2.

HILLS against BAGNALL.

Kent, 16th June 1737.

The rector of *Fritenden*, in *Kent*, is only entitled to a *modus* of 4d. an acre for all lands, except woodlands, in lieu of the tithes of grass, hay, pasture, and all small tithes, except of flax.

THE plaintiffs, as owners and occupiers of lands in the parish of *Fritenden*, in the county of *Kent*, stated, that, by immemorial custom, there had been paid by half-yearly payments, at *Michaelmas* and *Lady Day*, to the rector of the parish, by every occupier of lands therein (except woodland), fourpence an acre as a *modus* in lieu of tithe hay, grass, and pasture, and all small tithes (except flax) yearly arising upon their lands, and after that rate for a greater or less quantity of land,

The rector said, that he had purchased the perpetual advowson of the said rectory, and, denying the said *modus*, insisted, that he is entitled to all small tithes, and to the tithe of hay and pasture yearly arising therein, in kind,

THE COURT, upon hearing counsel on behalf of the plaintiffs, and no one appearing for the defendant, confirmed and established

blished the said *modus*; and on the twenty-seventh of *October* 1727, the decree was made absolute.

HILLS
against
BAGNALL.

JA. REYNOLDS.
LAW. CARTER.
WM. THOMSON.
WM. FORTESCUE.

TALBOT *against* SALMON.

TRIN. TERM,
II. GEO. 2.

Cheshire, 20th *June* 1737.

THE bill stated, that the *Bishop of Litchfield and Coventry* being seised, in right of his bishopric, of the rectory impropriate of *Wybonbury*, in the county of *Cheshire*, by indenture of lease, dated the twenty-seventh of *April* 1726, granted and demised to *Sir J. Leighton* one moiety of a house, barn, and croft therein, and also all the tithes of corn, grain, hay, and pulse, growing within the townships, villages, and hamlets of *Charlton*, *Blackenham*, &c. within the said parish, to hold to him and his heirs for three lives, at a certain yearly rent; that the same were mortgaged by *Sir Edward* to *B. Hoare*, whose title thereto becoming absolute, the plaintiff purchased the same of him by indentures of lease and release dated the twenty-sixth and twenty-seventh of *March* 1734, and thereby became entitled to the premises and to the tithes of all hay within the several hamlets.

The bishop of *Litchfield and Coventry* is entitled to the tithes of hay arising in the hamlets of *Charlton*, *Blackenham*, and other places, in the parish of *Wybonbury*, in *Cheshire*.

The defendants appeared, and, except the defendant *Salmon*, put in their answers, and denied that the plaintiff is entitled to the tithe of hay in the said hamlets. They admitted that they held lands in the hamlets, and that they had hay therefrom; and they set forth the quantities and values of the said hay, and the value of the tithe; and insisted, that no tithe hay, or any satisfaction in lieu thereof, had ever been paid for the lands in their occupation, or for any other lands within the said parish or the titheable places thereof, except *Stabley* and *Willaston*; for the tithe hay of which places a *modus* is payable. They further said, that they believed that the bishops of the diocese in which the parish of *Wybonbury* lies were formerly entitled to the tithes thereof; but how such title accrued they have not been able to discover; and that they cannot set forth particularly the ground of the exemption of hay from paying tithe.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the several depositions in the cause; the lease, dated the twenty-seventh of *April* 1726, from the bishop of *Coventry* to *Sir Edward Leighton*, of the tithes of corn, grain, hay, and pulse, in the parish of *Wybonbury*; a lease and release, dated the second and third of *May* 1726, from *Sir Edward* to *Mr. B. Hoare*, being a mortgage of the said lease and tithes;

TALBOT
against
SALMON.

tithe; other leases; a decree, report, &c. of foreclosure in this court, *Hoare v. Leighton*, dated the first of *December* 1729; a copy of a survey of the manor of *Wybonbury*, taken the twenty-second of *March* 1646; a decree, dated the fifth of *July*, in the fourth year of *James the Second*, *Lord Carrington v. Masfall*; also a decree, dated the ninth of *July*, in the eighth year of *William the Third*, *Medley v. Talmey*; and upon full debate of the matter;

THE COURT ordered the defendants to account for the tithe of all the hay which they severally had upon the lands which they respectively occupied in the several townships, villages, or hamlets, for the time demanded by the bill; and on the twelfth of *May* 1740, the deputy's report was confirmed with costs.

EASTER TERM,
11. GEO. 2.

BURSLEM against SPENCER; et à Contra.

Norfolk, 8th May 1738.

The rector of *Great Fransham*, in *Norfolk* insists on taking his tithes in kind; and states, that the defendant worked his plough in *Great Fransham*, and depastured the horses in *Little Fransham* and in *Dunham*; that he was entitled to the tenth meal of milk, and to the tenth calf; but that the defendant pretended a special mode of tithing milk.

The defendant says, there is a custom to make the ninth evening's milk, when skimmed, and the tenth morning's unskimmed, from the ninth of *May* to the first of *August*, into two cheeses, and one whole meal's milk into one cheese, and deliver the first

THE rector of *Great Fransham*, in the county of *Norfolk*, claimed all the tithes thereof in kind; and stated, that the defendant had, from *Lammas* 1735, occupied a grass farm in the parish, and had depastured thereon milch cows, a great number of unprofitable cattle, and several horses which had been used for the draught and plough during part of that year in another part of the said farm lying in other parishes, to wit, in *Little Fransham* and *Little Dunham*; and that the said cows had calves. The bill also stated, that of the milk of the said cows there was due to the plaintiff the tenth meal during the time they yielded milk in the said year, and the tenth calf of the said cows, and a proportionable tithe for the draught horses and unprofitable stock; but that the defendant pretended, that the plaintiff was entitled only to the ninth night and tenth morning's meals from *May Day* to *Lammas Day*. The bill therefore prayed a discovery of the quantities, qualities, and values of his titheable matters and things, and an account and satisfaction for the same.

The defendant said, that no such tithe milk as demanded by the bill had ever been paid in the parish; but that, time immemorially, there had been paid, by every occupier of lands therein, the whole tenth morning's meal of milk mixed together with the milk of the night before, the cream being first taken off from the said night's milk, of all their respective cows, from the ninth of *May* to the first of *August* every year, made into cheese, called *two meal cheeses*, and delivered to the rector of the said parish at his house in *Great Fransham* aforesaid, on *Lammas Day* yearly, or so soon after as demanded by the rector; and also one whole meal of milk of their said cows made into a cheese, and delivered to the said rector at the place aforesaid on *Lammas Day*, and the second on *Wet Monday*, at the parsonage, in lieu of the whole year; Cro. Eliz. 609.

Whitfun

Whitsun Monday yearly, or so soon after as demanded by the said rector; and that the said cheefes were so delivered and accepted in lieu of all tithe milk arising in the said parish. The defendant also said, that he believed that there were other tithes, not demanded by the bill, which were not payable in kind, particularly the tithe of chickens, for which there was yearly payable at *Easter* two eggs for every cock, and one egg for an hen. He also said, that he claimed a custom of paying no tithe in kind for hearth wood, honey, and apples, but in lieu thereof an hen, called a *loak hen*, on *Saint Thomas's Day* yearly. He admitted, that the plaintiff was rector, and entitled to the great and small tithes of the parish in kind, except as aforesaid; and that he had, for fifteen years past, occupied a considerable farm in the parishes mentioned in the bill; but he said, that he could not set forth the value of the tithes of that part lying in *Great Fransham*, for that he had, for several years, compounded for the same, except for the loak hen, eggs, and *Easter* offerings, and had paid the same to *Lammas* 1735; and he set forth the quantities and qualities of the titheable matters during the time demanded by the bill. He admitted, that he had paid tithes in kind of milk for twenty cows last year, which, he said, was in his own wrong, as tithe milk was not due; and that he could not set forth the value of the whole tenth morning's milk mixed as aforesaid. He insisted, that no tithes were due for draught horses, yearlings, and two year olds; and that he had been always ready to pay his just dues, and had paid all his great and small tithes to *Michaelmas* last; and that, in the year 1728, he came to an agreement for the same with the plaintiff for twelve pounds a-year.

The defendant filed his cross bill; and set forth the particular lands, and the quantities of cattle he had fed thereon, and insisted that no tithe milk was due in kind, and he stated the customs and *modus*es as in his answer to the original bill.

The rector answered, and denied the same; the plaintiff replied; the defendant rejoined; and witnesses were examined in both causes; and upon hearing counsel for all parties; and reading several depositions; and on full debate;

THE COURT directed an issue to try, before a special jury, the validity of the said *modus* and custom of milk and loak hen; save and except as respected the lands in the occupation of *H. Case*.

THE COURT further ordered the defendant to account for the tithes due for his calves and unprofitable cattle depastured there during the time demanded by the bill; the deputy remembrancer to enquire, whether the proportion of the defendant's cattle used for the plough depastured on the defendant's lands in the said parish of *Great Fransham*, were more than sufficient to cultivate the said lands, and how many more; the costs to be reserved

BURSTLEM

against

SPENCER;

et 2 Contra.

that there are two eggs payable for every cock, and one egg for every hen, at *Easter*, in lieu of tithe chickens;

that a loak hen is payable on *Saint Thomas's Day*, in lieu of the tithes of firewood, honey, and apples. *Anst. 322. notis.*

He admitted, that he had paid tithe milk in kind; but said, it was in his own wrong; and insists, no tithes are due for draught horses, yearlings, and two year olds.

The defendant files a cross bill to establish the said *modus*es.

The cause heard.

Issues directed to try the *modus*es in lieu of milk and loak hen.

The defendant ordered to pay tithes for calves and depasturing barren cattle; but to be allowed for as many as were necessary to plough the land.

BURFLEM
against
SPENCER;
et c. *Contra*.

The bill as to
yearlings and
two year olds
dismissed.

The *modus* as to
chickens allowed
and established.

A verdict a-
gainst the *modus*
as to tithe milk;
and in favour of
that as to firewood, honey, and apples.

The tithes of
milk decreed in
kind.

The bill as to
firewood, honey,
and apples, dis-
missed.

The cross bill as
to tithe milk dis-
missed.

The *modus* of the
loak hen esta-
blished.

reserved as to the said matters; and the original bill as demanding tithe of the yearlings and two year olds, to be dismissed with costs; so much of the original bill as demands tithes of chickens to be dismissed with costs to the time of filing the special replication; and the *modus* of eggs in lieu of chickens, set up and insisted on by the defendant's answer to the original bill, and also by the cross bill, to be established with costs to the time of the plaintiff *Burflem* filing his special replication.

A trial was accordingly had; and the jury found a verdict against the custom as to the tithe of *milk*, and for the custom as to the *loak hen*.

THE COURT therefore ordered the defendant to account for his tithe of milk with costs; that so much of the original bill as demands tithes of *hearth wood, honey, and apples*, shall be dismissed with costs in equity; that so much of the cross bill as relates to the tithe milk, and the *modus* set up in lieu thereof, shall be dismissed with costs at law and in equity; and that the *modus* of a *loak hen* shall be established, with costs both at law and in equity, as to such part of the cross bill as sets up the said *modus* of a *loak hen*.

The deputy made his report, dated the first of February 1739; and upon reading the same, the Court ordered it to be ratified and confirmed with costs.

AND IT WAS FURTHER ORDERED, that so much of the original bill as demands tithes of cattle used for the plough by the defendant on his farm be dismissed with costs.

COMYNS, Chief Baron.

CARTER, Baron.

PARKER, Baron.

WRIGHT, Baron.

HILARY TERM
12. GEO. 2.

WALLIS against PAYNE.

Essex, 8th February 1738.

The vicar of
Prittlewell, in
Essex, and not
the impropria-
tor, is entitled to
the tithes of clo-
ver seed, the same
being a small
tithe.

S. C. Bunb. 344.
S. C. Comy. 633.

THE bill stated, that *J. Brisslow* and another being seized in fee simple, and entitled to the rectory impropriate of *Prittlewell*, in the county of *Essex*, and to the great tithes arising in the said parish, demised the same to the plaintiff for twenty-one years; and that, for several years before the said lease, the plaintiff was tenant at will of the said great tithes, and received the same in kind, except when the same were compounded for; that by virtue of the said lease, he had collected all great tithes

and see *Skin. 341. 12. Mod. 41. 3 Lev. 363.*

WALLIS
against
PAYNE.

in kind or by composition, except for two years, when the defendant occupied several acres of land, and grew clover thereon, which he cut and made into hay, and also had clover seed and rape seed; that the tithe of clover hay, and clover and rape seeds were great tithes; and that the defendant ought to have compounded for the same, or to have paid them in kind, but which he had refused, under some pretences, to do. The bill therefore prayed an account of the same, and that the defendant might satisfy the plaintiff for the tithes thereof.

The defendant *Payne* admitted, that, in the said years, he had occupied a farm, called *Milton Hall*; and he set forth the quantities of his tithable matters thereon; and insisted, that no tithes were due for clover seed; for that he had no clover hay in the year 1735; and that in 1736 the plaintiff had received his tithe in kind of the same; and that the aftermath being preserved for seed was, in the same year, cut and thrashed for seed, for which no tithe was due. He denied that clover seed, rape seed, or the aftermath of clover was a great tithe; but insisted, that they were small tithes, and payable to the vicar; and therefore as he had paid the vicar his composition for the same, he was not answerable to the plaintiff for the tithes either of clover seed, rape seed, or the aftermath or second cutting of clover grafs. The defendant also insisted, that there had always been an immemorial custom in the said parish for the owners or occupiers of *Milton Hall Farm* to pay four seam of wheat and forty shillings to the vicar, in lieu of all small tithes, and to take ten acres of hard corn and ten acres of soft corn tithe free; and that he had paid the said composition to the vicar for the said years.

A *modus* stated
in lieu of small
tithes.

The plaintiff replied specially to *Payne's* answer, and thereby waived his demand to the tithe of rape seed.

The defendant rejoined; and witnesses were examined on both sides; and the cause came on the twenty-second of February 1737; when it was ordered to stand over on payment of five pounds costs of the day, to make the vicar a party thereto. The bill being amended accordingly;

The defendant *Underhill* the vicar, admitting that the great tithes were due in kind to the impropiators or their tenants for such lands as were chargeable therewith, said, that the defendant *Payne* held *Milton Hall Farm*, and that he believed there was such a custom as stated in his answer. He insisted, that the tithe of clover seed was a vicarial tithe, and that for thirty years past he had, as vicar, received the tithe of clover grafs when cut for seed; and that the said tithe had always been paid to him, as vicar, until the plaintiff interrupted him; and he insisted, that the tithes, as well of clover as clover seed and rape seed, were vicarial or small tithes, especially if produced after mowing
the

WALLIS
against
PAYNE.

the clover grass growing in the same year (if cut for seed), and of the second math (if cut for seed), when the tithe of the first cutting of such clover had been paid in the same year in kind, if cut for hay.

The plaintiff replied specially to this answer, and thereby waived his demand to the tithe of rape seed.

The defendant rejoined, and witnesses were examined on both sides; and now upon hearing counsel on both sides, and reading the proofs, and on full debate;

THE COURT was of opinion, that the tithe of clover seed is a small tithe, and belongs to the vicar of the parish; and therefore ordered, that the bill be dismissed with costs.

J. COMYNS.
LAW. CARTER.
W. THOMSON.
THOS. PARKER.

TRIN. TERM,
13. GEO. 2.

BERNEY against ROBERTS.

Norfolk, 5th July 1739.

The rector of *Hethersett*, in *Norfolk*, is entitled to the tithes of milk, fruit, and wood, in kind.

THE rector of *Hethersett*, in the county of *Norfolk*, claimed the tithes of all corn, grain, hay, seeds, milk, calves, sheep, pigs, lambs, wool, hops, and other great and small tithes, and *Easter* offerings, from *Michaelmas* 1736, arising on a farm in the said parish in the defendant's occupation.

The defendant admitted that he occupied a house and lands in the parish; but denied that the rector is entitled to tithes of milk, fruit, or wood in kind; and he set up three *modus* in lieu of the tithes thereof.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides.

The plaintiff's counsel objected, that the defendant had not properly insisted on any *modus* by his answer; which objection, on reading the answer, and hearing the defendant's counsel, was over-ruled.

On reading the depositions; a terrier in 1709; one of the tenth of *June* 1628; and on full debate;

THE COURT ordered issues to try the validity of the *modus*, as laid and insisted upon by the defendant in his answer.

FIRST, Whether there is and hath been, for time out of mind, a custom in the parish of *Hethersett*, for the parishioners thereof to pay to the rector for the time being, on the first of *August* yearly, or so soon after as the same was demanded, twopence for

for every milch cow and calf, and one penny for every fallow cow, as a *modus* for and in lieu of all the tithe of milk arising or accruing within the said parish?

BERNEY
against
ROBERTS.

SECONDLY, Whether the parishioners of the parish of *Hetherset* have, for time immemorial, paid, and ought to pay, to the rector of the said parish for the time being, on the first of *August* yearly, or so soon after as the same is demanded, one penny, called *fruit money*, for every orchard, as a *modus* for and in lieu of all tithe of fruit arising or accruing?

THIRDLY, Whether the parishioners of the parish of *Hetherset* being housekeepers have, for time immemorial, respectively paid, and ought to pay to the rector of the parish for the time being, on the first of *August* yearly, or so soon after as the same is demanded, one penny, called *hearth money*, as a *modus* for and in lieu of all the tithe of wood felled or cut by them respectively within the said parish, and used for firing in their respective houses and families?

A trial was accordingly had, before a special jury, on the said three issues, and a verdict was found for the plaintiff.

THE COURT ordered the defendant to account for his tithes of milk, fruit, and wood, during the time demanded by the bill, with costs both at law and in this court.

THE CORPORATION OF BURY SAINT EDMUNDS TRIN. TERM,
against EVANS. 13. GEO. 2.

Suffolk, 2d July 1739.

THE bill stated, that *James the First*, being seised in fee, in right of his crown, of all manner of tithes, both great and small, as well predial and personal as mixed, arising or renewing within the lordship of *Bury Saint Edmunds*, in the county of *Suffolk*, and the precincts and territories thereof, and of the rectories and vicarages impropriate of *Saint Mary* and *Saint James*, and the two parish churches thereto belonging, in *Bury* aforesaid, with all their rights, members, and appurtenances, which formerly belonged to the late dissolved *monastery of Bury*, or to the abbot and convent there, did, by letters patent respectively dated the first of *July* in the sixth, and the seventeenth of *September* in the twelfth year of his reign, give and grant all and singular the said premises to the aldermen and burgessees of the said borough of *Bury Saint Edmunds* to hold for ever; that they being so entitled did, by indenture, dated the second of *April* 1724, demise to the plaintiff *Wright* all the tithes of corn and grain, and all other great tithes arising, &c. within the bounds, &c. of the said borough and the titheable places thereof, except upon certain lands, called *Eastgate*, *Barns*, and *Green Howe*, for eleven years,

The corporation of *Bury Saint Edmunds*, in *Suffolk*, as lay impropriators of *Saint Mary's* and *Saint James'*, in *Bury*, claims the small tithes of *Oldball Farm*.

S. C. 2. Eq. Abr. 734.
S. C. Bunb 345.
S. C. Comy. 643.

THE
CORPORATION
OF BURY SAINT
EDMUNDS
against
EVANS.

as also all small tithes within the town of *Bury Saint Edmunds* and the titheable places thereof; that the defendant *Evans* had, from *Lady Day* 1724, occupied several parcels of ground lying within the lordship of *Bury Saint Edmunds* or the titheable places thereof, and had thereon turnips, carrots, and clover which stood for seed and was mowed, tares which were cut and made into stover, and several other titheable matters, which he had severed and converted to his own use, without setting out the tithes thereof, or making any satisfaction for the same. The bill therefore prayed, that the defendant might be decreed to account and satisfy the plaintiff for his tithes due.

The defendant says, that the said farm was parcel of the possessions of the monastery of *Bury* at the time it was dissolved; and that the fact of no small tithes, or any thing in lieu thereof, having ever been paid for the same, is as good evidence that the said farm is tithe free as if a deed of exemption had been produced.

The defendant said, that he was a stranger to the several letters patent, but believed that the plaintiffs, the aldermen, &c. or their lessees, might take the tithes of corn and grain within the town of *Bury*, called *Almoners tithes*, and that they did not till lately take any other tithes; that the tithes of corn and grain might be demised to the plaintiff *Wright*, but that he did not know that the small tithes were so demised; that, during the time mentioned in the bill, he had occupied *Ilde*, or *Oldhall Farm*, formerly part of the possessions of the dissolved monastery of *Bury* at the dissolution thereof; that he also occupied other lands; and he set forth the same, and the quantities, qualities, and values of his titheable matters thereon; and said, that the aldermen, &c. or their lessees, are entitled to the tithes of corn and grain on all the said lands; and that they had been duly set out and taken by the plaintiff *Wright* in kind, but that no small tithes had ever been paid for the said lands; though he could not set forth how the same were exempted; but he insisted, that as no small tithes, or any satisfaction for them, had ever been paid or demanded, they are tithe free; that the tithes thereof had been duly released to the owners of the said lands; and that the long enjoyment of the said lands free from small tithes was evidence of title of exemption, and may be insisted on against the plaintiffs, who are *lay impropriators*, in the same manner as if an ancient grant or conveyance thereof had been made to the defendant, or to those under whom he claims, and could be produced.

The evidence read.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the aforesaid two grants of *James the First* to the said corporation; the lease from them to the plaintiff *Wright*; a particular out of the augmentation office, dated the tenth of *July*, in the thirty-seventh year of *Henry the Eighth*, of lands parcels of the possessions of the late dissolved monastery of *Bury Saint Edmunds*; the surrender of the abbot and convent of the said monastery to *Henry the Eighth*, dated the fourth of *November*, in the thirty-first year of his reign; several depositions on both sides; and after long debate on both sides;

THE

THE COURT declared, that what had been insisted on by the defendant, or on his behalf, was not sufficient to exempt him from the payment of the small tithes arising on the said lands so occupied by him as aforesaid; and that the said defendant ought to pay such small tithes; and ordered the defendant to account for the tithes demanded by the bill accordingly.

The Court of opinion, that the defendant cannot prescribe in *non decimando* even against a lay impropiator; and decree the payment of the tithes accordingly.

J. COMYNS.
LAW. CARTER.
THOS. PARKER.

BARTON *against* PIERCE.

Wiltshire, 19th February 1739.

HILARY TERM
13. GEO. 2.

THE bill stated, that *A. Knighton* being seised in fee of the parsonage impropriate or free chapel of *Norrige*, in the county of *Wilt*, and of all tithes great and small arising therein, the plaintiff became tenant to him for the same; that the owners of the said tithes and their lessees had always received, and ought to receive the tithes of the said chapelry; that the defendant had, for two years past, occupied *Norrige Farm*, and had ploughed *the Sheep Down*, part of the said farm, and sowed the same with wheat, the produce of which he had carried away without setting out the tithes thereof; that he had, on other parts of the said farm, depastured barren and unprofitable cattle, and had also had several lambs and calves, and quantities of fruit, milk, wool, pigs, poultry, eggs, and bees, for which he ought to have paid tithes. The bill therefore prayed a discovery of what titheable matters and things he had on the said farm and *Sheep Down*, and the values thereof, and for an account and satisfaction of the same.

The impropiator of the free chapel of *Norrige*, in *Wiltshire*, is entitled to the small tithes of *Norrige Farm* in the parish of *Upton Scudamore*; but the tract of land called *the Sheep Down*, in the parish of *Corsley*, is not within the precincts of the chapelry.

The defendant admitted, that, in the said years, he possessed *Norrige Farm*, in the parish of *Upton Scudamore* (except forty acres which he never rented), and *the Sheep Down*, which lies in the parish of *Corsley*, but not, to his knowledge, within the precincts of the chapelry of *Norrige*. He said, that he had on the said *Sheep Down* and on *Norrige Farm* several titheable matters and things; that he rented *the Sheep Down* tithe free; that no small tithes had ever been paid by the occupiers of *Norrige Farm*; that he had duly paid his great tithes arising thereon exclusive of *the Sheep Down*; that he knew not that the said *Down* ever belonged to the said farm, or that the plaintiff was entitled to the small tithes of the said farm, or to the tithes of *the Sheep Down*; and that he had never demanded the same until July 1737.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both

BARTON
against
PIERCE.

sides; and reading several depositions; and an indenture, signed *E. Buckler*, dated the seventh of *July* 1736; and on debate;

THE COURT ordered the defendant to account for the small tithes arising on *Norrige Farm*.

The Court also directed an issue to try, "Whether the tract of land, called *the Sheep Down*, in the defendant's possession, or any and what part thereof, lies within the parsonage impropriate or free chapel of *Norrige*?"

The trial was had, and a verdict given for the defendant.

The plaintiff not proceeding on the account before the deputy, the cause was set down, at the defendant's request, in *Trinity Term*, but was adjourned at the request of the plaintiff's counsel to obtain the report; and the defendant obtained the report, dated the second of *December* instant; and upon reading the decree, report, and *posse*; and hearing counsel on both sides;

THE COURT ordered the report to be ratified and confirmed; that the defendant do pay to the plaintiff seven pounds for his small tithes arising on *Norrige Farm*, with costs in respect of the small tithes; and that as to the demand of the tithes of *the Sheep Down*, the bill be dismissed with costs at law and in this court.

HILARY TERM
13. GEO. 2.

LORD PETRE against JOHNSON.

Essex, 21st February 1739.

The impropriator of *Mountnesyng*, in *Essex*, claims tithes in kind.

The defendant says, that his lands were parcel of the priory of regular canons of the order of *St. Augustine*, and that they are discharged from the payment of tithes by unity of possession.

THE impropriator of *Mountnesyng*, otherwise *Gynge Mountenay*, in the county of *Essex*, claimed all tithes, both great and small, arising therein, from *Michaelmas* 1734.

The defendant insisted, that the plaintiff was not entitled to the tithes of the lands he held in the parish, the same having been extinguished by unity of possession, for that the rectory, together with the said lands, formerly belonged to the dissolved monastery and priory of regular canons of the order of *Saint Augustines* in *Thobey*, in the said county; that the prior, at the time of the dissolution of the monastery, in the sixteenth year of *Henry the Eighth*, was seised of and entitled to the said lands as part of the demesnes belonging to the manor of *Thobey*, to which the monastery was entitled, together with the advowson and patronage of the church of *Saint Leonard Mountenay*, otherwise *Mountnesyng*; that the said monastery or priory being so dissolved, the rectory, manor, and demesne lands were seised into the hands of the said king; that he, in right of his crown, held the said lands freed and discharged of tithes until the twenty-first of *December*, in the seventeenth year of his reign; that he then granted the said manor and demesne lands, together with the rectory and tithes, to *Cardinal Wolsey*; that the

Cardinal

Cardinal held the said lands freed and discharged of tithes until he was attainted in *Michaelmas Term*, in the twenty-first year of *Henry the Eighth*, when the same were again seised into his majesty's hands; that the king, on the twenty-fourth of *December*, in the twenty-second year of his reign, granted the said manor and demesne lands to *Sir R. Page* and his assigns for life, free and discharged of tithes; that the reversion being in his said majesty, he, on the twenty-fourth of *April*, in the thirty-first year of his reign, granted the same, for the consideration of two hundred and forty pounds, to *W. Berners* and *Dorothy* his wife, and their heirs, for ever, who enjoyed the same tithe free; that from the said *W. Berners* and *Dorothy Berners* the same, by several mesne conveyances, became vested in *G. Brissell*, under whom the said defendant held and occupied the same, as tenant at will, discharged of tithes. The defendant therefore hoped that he should not be accountable to the plaintiff for the values of the tithes, but have the benefit of the matters aforesaid, and also of the act 31. *Hen. 8.* in the same manner as if he had pleaded the same in bar.

LORD PETRE
against
JANSON.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiff; and upon hearing counsel on both sides; and reading the defendant's answer; and several depositions on the plaintiff's behalf; and also the letters patent under the great seal, dated the twenty-fifth of *January*, in the thirty-seventh year of *Henry the Eighth*, whereby the said rectory of *Mountnesyng*, and the tithes thereto belonging, together with the tithes of the demesne lands of the manor of *Thobey*, late parcel of and belonging to the late dissolved priory of *Thobey*, were granted by the said late king to *Sir William Petre* and his heirs for ever, and under whom the plaintiff claimed the same; also a copy of an inquisition taken the eighth of *August*, in the seventeenth year of the late king, whereby the said manor and demesne lands, rectory, and tithes were seised into his majesty's hands on the dissolution of the said monastery or priory; and a copy of another inquisition taken the day of , in the year of the said king, whereby the said premises were again seised into his majesty's hands on the attainder of *Cardinal Wolsey*; and on full debate of the matter;

The evidence read, whereby it appears, that the rectory of *Mountnesyng*, and the demesnes of the manor of *Thobey*, of which the lands in question were said to be part, were conveyed to the plaintiff.

THE COURT ordered the defendant to account with and satisfy the plaintiff for the values of his several tithes, which he had arising on the several lands and grounds occupied by him in the said parish, and the titheable places thereof, demanded by the said bill.

The tithes decreed.

TRIN. TERM,
14. GEO. 2.

POPPLWELL *against* CANBY ; *et à Con'ra.*

Yorkshire, 23d June 1740.

The undertenant of the lessees of the Duke of Devonshire, as improPRIATOR of *Thorn and Hatfield*, in *Yorkshire*, claims the tithes of lands inclosed from the common fields and of the uninclosed commons of *Thorn*.

THE bill stated, that the Duke of Devonshire, being seised of the impropriate rectories of *Thorn* and *Hatfield*, in the county of *York*, and the houses, tithes, barns, and glebe lands therein, did, by indenture dated the fourteenth of *October* 1728, let the same to the plaintiffs *Popplewell* and *Healy*, to hold for eleven years, at six hundred pounds a year; that they, by the said lease, became entitled to all the tithes and ecclesiastical dues payable in the said parishes; that being so entitled, they, on the fifteenth day of the said month, demised the same to the plaintiff *Jackson*, who entered upon the same at *Lady Day*, and thereby became entitled to receive all tithes and dues from the several occupiers and farmers of lands therein; that the defendants had, for several years past, occupied several acres of ground inclosed from the common corn fields in the parish of *Thorn*, on which they had several titheable matters and things; that they had depastured dry and unprofitable cattle on their said lands, as well as on the Commons belonging to the said rectories; but that they had refused to account with the plaintiff for the great and small tithes thereof, or to make him any recompence for the same. The bill therefore prayed, that they might set forth the quantities, qualities, and values of their titheable matters, and account with the plaintiff *Jackson* for the same.

The defendant *Canby* says, that *New Close* and *Gwynne Close* were parcels of the common fields; and that there is a *modus* of 2d. an acre in lieu of the tithe hay thereof; and a *modus* in lieu of tithe milk of 1d. a cow fed thereon.

A *modus* of 1d. an acre in lieu of tithe hay and pasture of *Great Middle Marsh Close*.

The defendant *Canby* denied all knowledge of the plaintiff's title; and said, that for four years past he had occupied *New Close* and *Gwynne Close*; that the said closes were formerly part of a common field; that he had them as meadow, and had hay therefrom, and had depastured thereon milch cows; and he set forth the quantity and value of the hay he had made thereon; and insisted on a *modus* of twopence an acre in lieu of the tithes thereof, averring, that the said *modus* had always been accepted until the year 1730; that he had tendered the same to the plaintiff *Jackson*; and that he had refused to receive it. He also admitted, that he had kept a number of cows; and he set forth the quantity and value of their milk, and insisted on a *modus* of one penny for each cow, in lieu of the tithe milk, averring, that the said *modus*es had always been accepted until the year 1730, and that the plaintiff *Jackson* had accepted of the same from him. He also admitted, that in the year 1733 he had depastured *Great Middle Marsh Close* with unprofitable cattle; and he set forth the value of the agistment of such cattle; and insisted, that when the said field is mowed or depastured with unprofitable cattle, a *modus* of only one penny an acre, in lieu of the tithe of hay and agistment, is due; and averred, that he

was

was ready to pay the same. He also admitted, that for the said years he had occupied a house, garden, and orchard; and that he had not paid any tithes for the same; and insisted, that a *modus* of twopence halfpenny is due in lieu of such tithes. He also admitted, that he had a dove-house, and pigeons, and pigeons dung therein; and he set forth the value and tithes thereof; but insisted, that as he had not sold any of the said pigeons or pigeons dung, no tithes are payable for the same. He also admitted, that he had kept sows which had pigs; and he set forth the numbers and values; but insisted on a *modus* of one penny for every litter of pigs not exceeding five, and for every litter exceeding five, twopence; and averred, that he had tendered the said *modus* to the plaintiff *Jackson*. He also admitted, that he dwelt with his family within the said rectory; but insisted, that only twopence is due as an *Easter offering* for every person above the age of sixteen in his family; and that he had paid the same yearly. He also said, that in the year 1730 he occupied twenty-six acres in *Ditch Marsh*; that he had depastured part thereof with young cattle, and was willing to pay the tithe for the said agistment; that the other part of *Ditch Marsh* laid fallow; that the three following years the whole of it was sown with corn; and that he had paid the tithes thereof. He also said, that he had, in the year 1733, occupied *Double Brig Close*; that he had depastured thereon, amongst his cows and draught horses, four young beasts; and that he was ready to pay the tithe of agistment of the same. He also admitted, that during the said years he had occupied five acres, and better, in *Ealands*, and three acres and a half in *Old Jugs*; that he had used them sometimes as meadow, and had at other times depastured thereon unprofitable cattle; and insisted on a *modus* of twopence an acre in lieu of the tithes of hay and of the agistment of unprofitable cattle upon the said lands; and which he averred he had tendered to the plaintiff. He also admitted, that in the year 1730 he had occupied *Lesser Middle Marsh Close*, and had depastured the same with unprofitable cattle; and insisted on a *modus* of one penny an acre for the same, which, he said, he had paid to the plaintiff *Jackson*; and that the same had been accepted by him. He alledged, that he had occupied no other lands save what were sowed with corn; and that he had no other titheable matters than as aforesaid.

The defendant *Cutts* said, that the defendant *Canby* died in the year 1735; and having appointed him sole executor, that he had administered to the testator's will; and that he referred to his answer. The defendant further stated, that he had, for six years past, occupied *Old Jugs Close*, and had, in each of the said years, mowed the same; and, admitting that he had not set out the tithe hay, insisted on a *modus* of twopence an acre for the same.

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against
CANBY;
et c. Contra.

A *modus* of 2½d.
a-year for house,
garden, and or-
chard.

That no tithes
are due for pi-
geons or pigeons
dung not sold.

A *modus* of 1d.
for every litter
of pigs not ex-
ceeding five, and
2d. for every li-
ter exceeding
that number;

2d. a-year for
Easter offerings
for each person.

That tithes are
due for *Ditch
Marsh*
and *Double Brig
Close*.

A *modus* of 2d.
an acre for *Ea-
lands* and *Old
Jugs*, in lieu of
tithe hay and
pasture.

A *modus* of 1d.
an acre in lieu
of the pasture of
*Lesser Middle
Marsh Close*.

The defendant
Cutts, as execu-
tor of the de-
fendant *Canby*,
insists on a *mo-
dus* of 2d. an a-
cre for the tithe
hay of *Old
Jugs*.

POPPLEWELL
against
CANBY;
et c. Contra.

The defendants *Foster*, *Veney*, and *Capon*, said, that they knew nothing of the plaintiff's title.

The defendant *Foster* insists on a *modus* of 2d. an acre for *Church Close* and *New Close*, and 3d. an acre for *Bottom Old Field*.

The defendant *Foster* admitted, that for four years past she had occupied *Church Close Meadow* and *New Close*; and said, that they had formerly been inclosed from a common field, and that she had made a quantity of hay thereon; and she insisted on a *modus* of twopence an acre in lieu of tithe hay, which, she said, she had tendered. She also admitted, that she had occupied *Bottom Old Field*; and that she had mowed the same; and insisted on a *modus* of one penny an acre.

A *modus* of 1d. a cow, in lieu of tithe milk.

The defendants *Foster* and *Veney* admitted, that they had kept milch cows; and they set forth the numbers, quantities and value of the tithe of milk; but insisted on the said *modus* of one penny for each cow.

A *modus* of 2d. an acre, in lieu of tithe hay and pasture of the *Long Haddy Close*, *Tweenbridge Moors*, and the *Land End Close*, and 2½d. a-year for houses, orchards, and gardens.

The defendant *Foster* admitted, that she possessed *Long Haddy Close*, *Tweenbridge Moors*, and *Land End Closes*; that she had hay therefrom, and had depastured them with unprofitable cattle; but insisted on the said *modus* of twopence an acre; and she averred, that she had tendered the same, and that the plaintiff had received the said *modus* for *Tweenbridge Moors*. She also admitted, that she occupied an house, garden, and orchard; and insisted that a *modus* of twopence halfpenny only is due, and that the plaintiff had accepted of the same. She also admitted, that she kept a dove-house; but said, she had not sold any pigeons, or the dung, except of two; but she insisted, that no tithes were due for the same. As to *Easter* offerings, she answered as the defendant *Canby* had done.

The defendant *Casson* said, that he had depastured sheep in the said parish; and he set forth the numbers in each year; but said, that he had paid the plaintiff the full tithes of the wool and lambs thereof, and also for his *Easter* offerings.

The other defendants insist on the like *moduses*;

The defendants *Foster*, *Veney*, and *Casson*, put in their answers to the amended bill, and set forth the particular quantities of lands held by them, and the products thereof, for the time demanded; and insisted on the said *moduses* of one penny and twopence an acre for hay, and the *modus* in lieu of tithe milk, &c. as in the former answer.

and a *modus* of 1d. for a swarm of bees; 3d. for a cow; and ½d. for a calf.

The other defendants put in their answers to the like effect, and set up the said *moduses*, and a *modus* of one penny for each swarm of bees; one penny for a cow; one halfpenny for a calf; and said, that no monthly tithe was due for sheep; and insisted on the said *moduses* for cows, milk, calves, and pigs.

The defendants file a cross bill against the impropriator and his lessees, and insist on the following *moduses*:

The defendants filed their cross bill against the *Earl of Portmore* and the several plaintiffs in the original bill, setting forth,

that

that they were inhabitants and parishioners of *Thorn*, and insisting that the following *modus*es are payable to the owner or farmer of the said rectory, in the lieu of the several titheable matters and things following, viz. FIRST, that *the Moores* on the north side of *Kirkbridge Causeway*, the *Hadder End*, the parcels of ground called *the Fields*, *the Old Fugs*, *the Land's End Closes*, *Wike Closes*, *Swanland Closes*, *Bradholme Close*, *High Ealand's Closes*, *Ashfield Closes*, within *the Park Bank* and *the Land's Ends* in *the Common Fields*, have immemorially paid, at *Easter* yearly, a *modus* of twopence for every acre thereof when depastured with dry and unprofitable cattle, or used as meadow, in lieu of tithe hay, herbage, pasture, and agistment.—SECONDLY, That the occupiers of *the Moores* on the south side of *Kirkbridge Causeway*, the occupiers of the *Low Grounds* on both sides of *Low Ealand's* and of *Middle Marsh*, *Sir Hugh Fordall's Close*, and *Ashfield Closes*, without the said *Park Bank*, have paid one penny for every acre thereof when depastured as aforesaid.—THIRDLY, That the occupier of every ancient messuage or dwelling-house with an orchard and garden, or either of them, thereto belonging, or without, has immemorially paid, at *Easter* yearly, a *modus* of twopence halfpenny, in lieu of all tithes of such messuage or house, and the garden or orchard if any.—FOURTHLY, That there hath been immemorially due and payable, at *Easter* yearly, the following *modus*es or customary payments, viz. for every litter of pigs not exceeding five, a *modus* of one penny; if exceeding five, twopence, in lieu of all tithes of such pigs; for every inhabitant of the age of sixteen or upwards, twopence for an *Easter offering*; for every calf, one halfpenny, and a cow, one penny, in lieu of tithe milk and calves; for every foal, one penny; for every brood of goslings not exceeding five, one penny, and if more, twopence, in lieu of tithe goslings; for every cock, two eggs, and one egg for every hen, in lieu of tithes of chickens and eggs; and for every swarm of bees, one penny, in lieu of tithe of honey and wax; that all the said *modus*es had been constantly accepted by the impropiators, owners, or farmers of the said rectory, in lieu of the tithes of the above-mentioned titheable matters and things, until the year 1730; and that they had always been ready to pay the same; but that the defendants had endeavoured to break through the same, and to compel the payment of tithes in kind. The cross bill therefore prayed, that the plaintiffs might be at liberty to examine their witnesses to prove the said *modus*es, and that the same might be established by this court.

The defendant *Jackson* said, that he believed several compositions had been made by the farmers of the said tithes with the occupiers of lands within the said rectory, from time to time, for their tithes; but he insisted, that such compositions

a master; 1d. for a child; $\frac{1}{2}$ d. for a servant; and 1d. for every cottage.

had

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against
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1st, 2d. a-year, in lieu of tithe hay and herbage for the North Moors, the Hadder End, the Fields, the Old Fugs, the Land's End Closes, and Ashfield Close, in the common fields of Thorn;

2dly, 1d. an acre for the South Moors, the Low Grounds, the Middle Marsh, Fordall Closes, and Ashfield Closes;

3dly, 2 $\frac{1}{2}$ d. a-year for every house, garden, and orchard;

4thly, 1d. for five pigs, and 2d. for a litter above five; and the same for goslings;

2d. for *Easter* offerings;

$\frac{1}{2}$ d. for a calf; 1d. for a cow; 1d. for a foal;

two eggs for a cock, and one for a hen; and

1d. for bees.

The lessee of the tithes says, there are due 2 $\frac{1}{2}$ d. a-year for every house; 2d. for every cottage.

POPPLERWELL
against
CANBY;
et c. Contra.

had been frequently varied, and not established as *modus*; and that tithes in kind were due; and he set forth his title to the tithes; but denied that he had ever insisted on three shillings and fourpence for *Easter offerings*; and said, that he believed the *Easter offerings* and *house dues* are as follows, viz. twopence half-penny for a messuage; twopence a-piece for the master and mistress; one penny for every child; and one halfpenny for every servant; and for every cottage, three halfpence, payable by the occupiers at *Easter* yearly; but that such payments had been included in the compositions made for small tithes. He admitted, that the plaintiffs were willing to pay the said *modus*, if he, the defendant, would have accepted of the same.

The impropriator insists upon the great tithes in kind.

The *Earl of Portmore* insisted, that he was entitled to tithes in kind for all the titheable matters in the bill mentioned; and he set forth his title to the said rectory, and said, that the same was conveyed to him subject to a lease formerly granted to the defendants *Popplerwell* and *Healy*; that the said lease does not expire till *Lady Day 1740*; and that he is not entitled to the said tithes until that time. He also insisted, that if any person who had formerly collected the tithes had accepted any compositions for them, no *modus* ought to be thereby established.

N. B. The defendants *Popplerwell* and *Healy's* answer is not stated in the decree.

The causes heard.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined for all parties; and the cause came on to be heard the ninth day of *June 1740*, when the Court ordered the causes to stand over, with liberty to the plaintiffs in the cross cause to amend their cross bill, by inserting therein the word "owners;" which being amended accordingly, the cause came on to be further heard on the twenty-third of *June 1740*; and upon reading the several proofs taken in the cause; and upon hearing what could be further alledged by counsel for all parties;

The defendants decreed to account for the depasturing of barren cattle on the Commons; and on *Ditch Marsh* and *Double Briggs*; for the tithes in kind of hop poles and willows cut on the land; for wheat in kind;

THE COURT ordered all the defendants to severally account with the plaintiff *Jackson* for the tithe of agistment of all dry, barren, and unprofitable cattle, by them severally kept or depastured on any of the commons in the pleadings mentioned; that the defendant *Cutts* do account for the tithe agistment of the dry, barren, and unprofitable cattle kept and depastured by his testator the defendant *Canby* on the said Commons or on *Ditch Marsh* and *Double Briggs Clofes*, and pay the same to the plaintiff *Jackson* out of his assets; that the defendant *Casson* do likewise account for the tithes of hop-poles and willows by him cut on lands by him occupied in the said rectory of *Thorn* or the titheable places thereof; that the defendant *Stanniland* do also account

for

for the tithe of *wheat*; that the defendant *L. Veney* do account for the tithes of agistment of dry, barren, and unprofitable cattle, by her kept and depastured on *Fleet Grounds* and *Meeres Clofes*; that the defendant *S. Forster* do likewise account for the tithes of her turkies and ducks; and that the defendants to the original bill do pay to the plaintiffs their costs for and in respect of the aforesaid several titheable matters and things for which they are hereby directed to account.

THE COURT also ordered, that all the defendants to the original bill do account for the tithe hay, pasture, and agistment of dry and unprofitable cattle for the grounds called *the Moors*, on the north side of *Kirkbridge Causeway*, and *the Moors* on the south side of the said causeway, according to the rate or *modus* of twopence by the acre for *the Moors* on the north side, and one penny on the south side, and so in proportion for a greater or less quantity than an acre; but that the same is to be taken and paid according to the statute acre, and without costs in respect thereof.

THE COURT further ordered, that the original bill be dismissed as to the tithes of wool, pigeons, and pigeons dung, with such costs as relate thereto.

And the following several *ancient moduses* or customary payments within the said parish of *Thorn*, and alledged in the cross bill, being admitted,

THE COURT doth hereby confirm and establish the same, and direct them to be for the future observed in the said parish, TO WIT, that the occupiers of the grounds called *the Hadds*, *the Old Jugs*, &c. within the bank called *the Park Bank*, shall pay yearly, at *Easter*, to the impropiator of the said rectory, twopence by the acre for every acre of the said grounds when depastured with any sort of dry and unprofitable cattle, or used as meadow, and so in proportion for a greater or less quantity, in lieu of tithe hay, herbage, pasture, and agistment of such grounds; and that the occupiers of the grounds called *the Low Grounds*, &c. shall pay, at *Easter* yearly, one penny by the acre as aforesaid.

THE COURT also ordered, that the occupier of every ancient messuage or dwelling-house with an ancient orchard and garden, or either of them, thereunto belonging, or without, shall pay yearly, at *Easter*, twopence halfpenny, in lieu of all tithes for the same; for every litter of pigs not exceeding five, one penny, and for more than five, twopence; for *Easter* offering, twopence, and no more; for every calf, one halfpenny; and for the milk of every such cow, one penny, in lieu of tithe calf and milk; for every foal, one penny; and for every brood of goslings not

Easter offerings, calves, milk, cows, foals, and goslings, established.

exceeding

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against
CANBY;
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for the pasturage of *Fleet Grounds* and *Meeres Clofes*, in kind; for turkies and ducks, in kind; with costs.

The *moduses* of 2d. and 1d. an acre, in lieu of the tithes of hay and pasturage on the *North* and *South Moors*, decreed to be paid, according to the statute acre.

The bill dismissed as to pigeons and pigeons dung.

The *modus* of 2d. an acre for the *Hadds*, the *Old Jugs*, &c. and 1d. an acre for the *Low Grounds*, &c. in lieu of tithe hay and herbage established.

The *modus* of 2½d. a year, in lieu of the tithes of every ancient house, orchard, and garden, established.

The *modus* as to the tithes of pigs established.

The *moduses* as to

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against
CANBY;
et à Contra.

The *modus* as to
cocks, and hens,
and bees, established.

The original bill,
as to the said ar-
ticles, dismissed
with costs;

and the said *mo-
duses* ordered to
be observed in
future.

Issues directed
to try,

1st, The *modus*
of 2d. an acre,
in lieu of the
tithe hay and
herbage of the
*Fields, the Wyke
Closes, Bradholme
Closes, and the
Land's End.*

2^{dly}, The *modus*
of 2d. in lieu of
the tithes of *New
Close and Gwynne
Close.*

3^{dly}, The *modus*
of 2d. in lieu of
the tithe of
*Church Close
Meadow and
New Close.*

The plaintiffs
obtain a rehear-
ing as to *Easter
offerings, the
tithes of wool,
and of new or-
chards.*

exceeding five, one penny, and more than five, twopence, in lieu of tithe foals and goslings; for every cock, two eggs, and for every hen, one egg, in lieu of all tithes of chickens and eggs; and one penny for every swarm of bees, in lieu of the tithes of honey and wax.

THE COURT also ordered the defendants in the cross cause to pay to the plaintiffs in the said cause their costs for and in respect of the said *moduses*; and that the said original bill as to the demand of tithe in kind of hay, &c. for which the said *moduses* are established, be, and the same is hereby dismissed with costs for and in respect thereof.

THE COURT likewise established and confirmed the ancient *moduses* mentioned in the cross bill, as the same are admitted by the counsel for the plaintiffs and defendants in the said cause, but without costs; and ordered and directed, that the said several *moduses* be for the future observed within the said parish.

THE COURT directed issues to try, before a special jury, the following *moduses*:

FIRST, The *modus* of twopence an acre insisted on by the cross bill to be payable for the several pieces or parcels of land called *the Fields, Wyke Closes, Bradholme Closes, and the Land's Ends*, in the common fields of the said parish of *Thorn*, in lieu of the tithe hay, herbage, pasture, and agistment of the said lands, as the same are laid and alledged by the plaintiffs in the cross bill.

SECONDLY, The *modus* of twopence an acre insisted on by the answer of the defendant *Canby*, deceased, to the original bill, to be due and payable in lieu of tithe hay arising on *New Close* and *Gwynne Close*, late in the occupation of the defendant *Canby*, as the same is laid and alledged in the said answer.

THIRDLY, The *modus* of twopence an acre insisted on by the answer of the defendant *S. Forster* to the original bill to be due and payable for *Church Close Meadow* and *New Close* in her occupation, in lieu of the tithe of hay, as the same is laid and alledged by the defendant in her said answer.

The plaintiffs in the original cause petitioned, that the causes might be reheard as to *Easter offerings*, the tithe of wool, and tithes in kind for *new orchards* and gardens not covered by the said *modus*, as to which new orchards and gardens no directions had been given. On the thirteenth of *November 1741*, the causes were ordered to be reheard as to the said matters upon the usual deposit of ten pounds; and the same being accordingly made;

The

The causes came on the twenty-third of November 1741 to be reheard on the said order; and on the return of the *poslea*, by which it appeared, that THE FIRST ISSUE was found for the plaintiffs in *the cross cause*; THE SECOND ISSUE for the defendant *Cutts* (executor to the late defendant *Canby*) in *the original cause*; and THE THIRD ISSUE for *S. Forster*.

THE COURT ordered *the original bill* to be dismissed as to the demand of tithe hay arising on *New Close* and *Gwyne Close*, with costs at law and in equity.

THE COURT also ordered *the original bill* to be dismissed as to the demand against *S. Forster* of tithe hay for *Church Close* and *New Close*, with costs at law and in equity.

THE COURT also ordered the *modus* of twopence an acre payable for the lands called *the Fields*, *Wyke Closes*, *Bradbolme Closes*, and *the Lands Ends*, in the common fields of *Thorn*, in lieu of the tithe hay, herbage, pasture, and agistment of the said lands, to be confirmed and established.

THE COURT also ordered that the said *modus* be, for the future, observed in the said parish; that the plaintiff's original bill be dismissed as to the demand of tithe hay, herbage, pasture, and agistment, on the said several pieces or parcels of land; and that the defendants in the original cause, and the plaintiffs in the cross cause, have their costs at law relating thereto.

THE COURT also ordered the decree made the twenty-third of June 1740 to be varied in the following particulars, *to wit*, the Court declare, that there is an ancient *modus* or customary payment within the said parish of *Thorn*, and the titheable places thereof, that the master or mistress of each family should pay to the impropiator of the said parish, his lessee or lessees, yearly, at *Easter*, twopence a head for themselves and each person in their respective families, of the age of sixteen years and upwards, for and as an *Easter* offering; and order and decree, that the said customary payment be, and the same is hereby confirmed and established, but without costs on either side, and be for the future observed in the said parish; and it is referred to the deputy remembrancer to take an account of the same; and that the costs be reserved as to the same.

AND THAT the defendants *Cooper* and others do account for the tithe of apples which they had from their new orchards; the costs to be reserved.

AND THAT the defendant *Casson* do also account for the tithe of the wool which he had from his sheep shorn within the said parish, &c.; the costs to be reserved.

POFFLEWELL
against
CANBY;
et à Contra.

The jury find
in favour of the
three *moduses*.

The original bill
dismissed as to
the tithes of *New
Close* and *Gwyne's
Close*.

The said bill dis-
missed as to the
tithes of *Church
Close* and *New
Close*.

The *modus* of
2d. an acre for
the *Fields*, *Wyke
Closes*, *Bradbolme
Closes*, and the
Lands Ends, esta-
blished;

and ordered to
be observed in
future;
and the original
bill dismissed, as
to the tithes
thereof, with
costs;

and 2d. a year
for every person
in a family de-
creed for *Easter*
offerings.

The tithes of
apples in new
orchards de-
creed.

The tithes of
wool decreed.

THE

POPPLEWELL

against
CANNY ;
et à Contra.

Costs.

THE COURT FURTHER ORDERED, that the said former decree as to the establishing the customary payment for *Easter offerings* therein mentioned, and the payment of costs to the plaintiffs in the cross cause in respect thereof ; as to the dismissal of the plaintiff's original bill ; as to the said *Easter offerings*, with costs in respect thereof ; and likewise as to the dismissal of the said original bill as against the defendant *Casson*, as to the demand of tithe wool, with costs in respect thereof, be, and the same is hereby discharged ; but that in all other particulars the same shall remain in full force and virtue.

AND IT IS FURTHER ORDERED, that the deposit of ten pounds, made by the plaintiffs in the original cause upon the rehearing, be returned to them.

EASTER TERM,
35. GEO. 2.

POPPLEWELL against HATFIELD ; et à Contra.

Yorkshire, 16th April 1741.

The plaintiff, as lessee of the impropriator of *Hatfield*, in *Yorkshire*, claims the tithes in kind of *Bramwith Hall Farm*, the *North Ings*, *Hatfield Park*, *Guile Carr*, *Stainforth Ings*, the *Huddle Grounds*, and the *Ancient Grounds*.

THE bill stated, that the *Duke of Devonshire* was seised of the impropriate rectory of *Hatfield*, in the county of *York*, and of the rectory houses, tithe barns, glebe lands, and tithes, yearly arising, &c. within the same ; that by lease, dated the fourteenth of *October* 1728, he let the same to the plaintiffs *Popplewell* and *Healy*, together with all the tithes of corn, grain, and hay at *Hatfield Hatfield*, *Woodhouse Hatfield*, *Levell Stainforth*, *Dunscroft*, *Tudworth Farm*, *Bramwith*, and the *Ings*, and all the tithes of wool and lambs, and all other small tithes, within the several places aforesaid, for eleven years, at six hundred pounds a-year ; that the said *Popplewell* and *Healy*, on the fifteenth of the same month, demised the same to the plaintiff *Jackson* for the said term ; that *Jackson*, by virtue of the demise, became entitled to the same, or to something in lieu thereof ; that all the defendants occupied inclosed grounds and common arable field lands in the several places above-mentioned, and had thereon various species of tithes, for which they refused to account.

The defendants insist on a *modus* of 2d. an acre, in lieu of the tithe hay of the *North Ings* and *Guile Carr*, and 2d. an acre for the *Ancient Grounds* ;

and admit, that tithes in kind are payable for *Stainforth Ings* and the *Huddle Grounds* ; but say, there is a *modus* of 1d. a cow ; ½d. a calf ; and 1d. a foal.

The defendants insisted on the following *moduses* : twopence an acre, in lieu of the tithe of grass or hay arising on the *North Ings*, and fourpence an acre in lieu as aforesaid on *Guile Carr*, which was, about twenty years ago, water shaken, and very poor and bad ; and one penny an acre in lieu of grass and hay growing upon the *Ancient Grounds*. They admitted, that such part of the *Levels* as had been improved, *Stainforth Ings*, and some part of the *Huddle Grounds*, paid tithe in kind ; but they averred, that tithe in kind for hay on any of the *Ancient Land* lying within the said rectory had never been taken before the plaintiff's lease. They also insisted on a *modus* of one penny for each cow, in lieu of tithe milk ; one halfpenny for every

calf ;

talf; and one penny for every foal, payable at *Easter* yearly; and that nothing had ever been paid or demanded for tithe herbage of unprofitable cattle as before mentioned. They also insisted on a *modus* of twopence halfpenny for each messuage, and three halfpence for a cottage, in lieu of all tithes for homesteads, including out-houses, orchards, and gardens. They also insisted on one penny for every swarm of bees, in lieu of the tithes of honey and wax.

The defendants filed their *cross bill* against the said plaintiffs and the *Earl of Portmore*, setting forth the *moduses*, with a few others; and prayed, that the said *moduses* might be established, and the defendants restrained from proceedings at law in the ecclesiastical court.

Jackson denied the *moduses* stated in the bill; and stated that, for many years, compositions had been made for small tithes; that about seventy years ago the farmers of the said tithes had usually taken, at *Easter*, twopence halfpenny for every messuage, three halfpence for every cottage, twopence each for every master and mistress of a family, one penny for every child, and one halfpenny for every servant, as *Easter offerings*; that such collections had since been varied; that every messuage or husbandry had paid twopence halfpenny; every cottage, three-halfpence; and every master of a family, for himself, his wife, and all his family above the age of sixteen years, twopence each, and no more, except when small tithes were compounded for; that to prevent trouble the farmers of the tithes had frequently taken three halfpence for every tup or wether, and one penny for every ewe sold after shearing time, and before *Candlemas*; but if sold after *Candlemas*, and before shearing time, they have usually had a rateable monthly tithe. He also said, that there are several parcels of land, called *Hatfield Park*; that he had in his possession a coppice, containing thirty-six acres; that *Hatfield Park* had, for many years, paid little or no tithe; but for what reason he knew not; nor whether the said coppice was ever given in lieu of the tithes of the said park, or called the *Tithe Piece* or *Parsonage Coppice*; that he had been farmer of the said tithes since *Lady Day* 1729; and that he is entitled to tithes in kind from that time for all the titheable matters; but he admitted, that the said *moduses* had been tendered to him, and that he had refused to receive the same.

The *Earl of Portmore* also denied that there were any *moduses* paid in lieu of the titheable matters in the bill; and insisted, that he was entitled to tithes in kind for all the titheable matters within the said rectory. He also said, that he neither knew nor believed that *Hatfield Park* is exempt from the payment of tithes by the *real composition* in the bill mentioned. He further said, that at the

POPPLEWELL
against

HATFIELD;
et c. Contra.
that no tithe is
due for agist-
ment; that 2½d.
are due for a
house, and 1½d.
for a cottage;
and 1d. for bees.

The defendants
file a cross bill to
establish the said
moduses.

The lessee says,
2½d. for a house,
1½d. for a cot-
tage, 2d. for a
master, 1d. for
a child, ½d. for
a servant, have
been paid by
way of composi-
tion;

that 2d. for eve-
ry person is due
for *Easter offer-
ings*;

1½d. for a tup;
1d. for a ewe;

that he enjoys
the *Tithe Piece*
or the *Parsonage
Coppice*;

that the *moduses*
had been ten-
dered.

The impropria-
tor denies the
moduses, and that
Hatfield Park is
tithe free.

POPPELWELL
against
HATFIELD;
as & Contra.

the time he purchased the said rectory, the same was under lease to the other defendants; that their leases do not expire till *Lady Day 1740*; and that until that time he hath no right to collect the tithes.

The immediate
lessees of the
impropriator
say, that they
had demised the
tithes to the
plaintiff *Jack-*
son.

Popplewell and *Healy* said, that the parish of *Hatfield* is an impropriate rectory; that the late *Duke of Devonshire* was owner thereof; and that after his death the same descended to *Lord John Cavendish*, who had sold the same to the defendant *the Earl of Portmore*, subject to a lease, dated the fourteenth of *October 1728*, whereby the same was let to them for eleven years, which still subsisted; that they had granted the same to *Jackson*; and that not having concerned themselves in collecting the tithes, they knew nothing of the *modus*es in the bill mentioned, or of the suits *Jackson* had commenced concerning the same.

The causes
heard.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined in both causes; and the causes came on to be heard on the ninth day of *February* last; and upon reading the indenture of lease, dated the fourteenth of *October 1728*; and the several proofs in the cause; the Court in part heard the said causes, and adjourned the further consideration thereof to the sixteenth of *April 1741*; when, on reading some other proofs, and on full consideration had thereon;

The following
*modus*es establi-
shed:

THE COURT confirmed and established the following *modus*es mentioned in the cross bill, and admitted by the counsel for the said several parties, and directed the same to be observed for the future.

ad. an acre, in
lieu of the tithe
hay of the *North*
ings;

FIRST, That the occupier and occupiers, for the time being, of a certain piece of ground, called *North Ings*, within the parish of *Hatfield*, shall pay yearly, at *Easter*, or as soon after as demanded, to the impropriator of the rectory, or his lessee or lessees, twopence an acre, and no more, for every acre of the said grounds, when used as meadow, for hay, and the grass thereof mown and made into hay, and so in proportion for a greater or less quantity than an acre, for and in lieu and satisfaction of all tithe of hay of, for, or arising from the said ground and every part thereof.

ad. a year, in
lieu of the tithes
of every ancient
house, &c.

SECONDLY, For every ancient messuage or dwelling-house with an ancient orchard or orchards, garden or gardens, twopence halfpenny, in lieu of tithes arising from such messuage, &c. and for every ancient cottage, &c. three halfpence.

ad. for every lit-
ter of pigs un-
der five.

THIRDLY, For every litter of pigs under the number of five, one halfpenny; and above five, or under ten, the impropriator or owner shall pay or receive the value or price of half the pig, setting such price as they think just, &c.; and if above ten, the impropriator, &c. to have one pig.

ad. for *Easter*
offerings.

FOURTHLY, For *Easter* offerings, twopence for every inhabitant above the age of sixteen.

FIFTHLY, For every calf calved in the parish, one halfpenny; and for the milk of such cow, one penny, in lieu of tithe calf and milk.

POPPLEWELL
against
HATFIELD;
et c. Contra.

SIXTHLY, Every foal, one penny.

½d. a calf;
1d. a cow;
goslings;

SEVENTHLY, A brood of goslings, if ten in number, the tenth gosling; and if under five, then one halfpenny a gosling; but if five, then the value of half a gosling, in the same manner as the pig.

EIGHTHLY, For cocks and hens kept on a large farm, fourpence, or twenty eggs, in lieu of tithe chickens and eggs. For every swarm of bees, one penny, for tithe honey and wax; as fully stated in the said decree.

4d. or twenty
eggs, in lieu of
tithe chickens,
and 1d. for bees;

NINTHLY, That *Hatfield Park* is exempt from the payment of all manner of tithes for any profits there arising; for that the impropiators, lessees, and farmers of the said rectory have, time out of mind, possessed and enjoyed, and yet do possess and enjoy, the *Tithe Piece* or *Parsonage Piece*, about forty acres, being anciently part of *Hatfield Park*, in lieu and full satisfaction for all and all manner of tithes of any kind arising within the said park.

that *Hatfield Park* is tithe free.

TENTHLY, That the defendants in the cross cause do pay the plaintiffs in the said cause their costs in respect of the said several *moduses*.

Costs.

THE COURT also confirmed and established the following *modus*, viz. that every person who keeps any tups, wethers, or ewes, within the parish, or the titheable places thereof, do and shall pay and ought to pay yearly, at *Midsummer*, or so soon after as demanded, to the impropiator, &c. three halfpence, and no more, for every tup or wether, and one penny for every ewe fold out of the parish, or rectory after *Candlemas*; but the Court declared, that the said customary payment is only in lieu of the tithe agistment of every such tup, wether, and ewe; and established the said *modus* without costs.

1½d. for a tup,
and 1d. for a
ewe, in lieu of
the tithes of a-
gistment.

THE COURT also ordered the defendants in the original cause to account for the tithes of the wool and lambs which they had from their sheep shorn or fallen within the said parish or titheable places thereof during the time demanded by the bill, but without costs.

Tithe wool and
lambs decreed.

THE COURT also directed two issues to try,

Issues directed
to try,

FIRST, "Whether there be such *modus* or customary payment of one penny by the acre, as insisted on by the plaintiffs in the cross bill to be due and payable for every acre of the *Ancient Grounds* in the parish and rectory of *Hatfield*, and the titheable places thereof (excepting the grounds therein

Whether 1d. an
acre is payable
in lieu of the tithe
hay of the *An-
cient Grounds*.

POFFLEWELL "excepted), when used as meadow, in lieu of the tithe of the
against "hay of the said grounds, as the same is laid and alledged by
HATFIELD; "the plaintiffs in the cross bill?"
et d Contra.

Whether Bram- SECONDLY, "Whether the messuage and lands, called *Bram-*
with Hall is in "with *Hall*, or any and what part thereof, lie within the
the parish of "parish and rectory of *Hatfield*?" Further directions to be
Hatfield. reserved till trial had.

First issue found The first issue was tried, and a verdict given for the plaintiffs;
for the plaintiffs, but the second issue was not tried; and on the twenty-fourth of
November 1741;

The modus of 1d. THE COURT, hearing counsel on both sides, ordered the said
an acre for the *modus* or customary payment of one penny as aforesaid, to be
Ancient Grounds confirmed and established, and to be for the future observed in
established, the parish, with costs at law and in this court in both causes
relating to the said *modus*.

The Easter of- It was also ordered, *by consent*, that the former decree, as to the
ferings decreed defendants in the cross cause paying to the plaintiffs their costs in
without costs, respect to *Easter offerings* thereby established, be discharged;
and that the said customary payment be established, as therein
set forth, without costs on either side.

The tithes of THE COURT also ordered the defendants in the original cause
turnips decreed, to account for the tithes of the turnips which they had on the
land by them severally occupied in the said parish, except on
Hatfield Park, and fed with barren and unprofitable cattle,
according to the value of the said tithes; and for the tithes of
pasturage or agistment of dry, barren, and unprofitable cattle on
their said lands.

Moduses as to THE COURT also ordered the defendants to account for the
clover seed, poultry, &c. established, tithes of their clover seed, and of their geese, turkies, hens,
ducks, and other poultry; and also for *Easter offerings* for them-
selves and their families, according to the said customary pay-
ments and *moduses* relating thereto, established by the former
decree.

The tithes of pi- THE COURT also ordered the defendants *Dickenson* and *New-*
geons sold de- *some* to account for the tithe of the pigeons by them sold from
creed, their dove-cotes in the said parish.

The tithes of THE COURT also ordered the defendant *Atkinson* to account
apples and new for the tithes of apples and other fruit and herbage which he had
orchards de- from his new garden and orchard in the said parish.
creed.

The bill as to THE COURT also ordered the original bill, as to the demand
tithe hay on the of tithe hay for the said ancient grounds for which the said
Ancient Grounds *modus* of one penny an acre is hereby established; and as to all
dismissed, the matters for which no account is hereby, or by the said former
decree, directed, to be dismissed with costs: the causes to be
further heard on the report.

The

The plaintiffs having failed to try the issue touching the messuage and lands, called *Bramwith Hall*, the same was ordered to be taken *pro confesso*; and on the twenty-eighth of April 1743, upon hearing counsel for the defendant *Gresbam*; and reading the decree, order, and countermand of notice of trial, and no counsel attending for the plaintiffs;

THE COURT ordered the bill to be dismissed as against the defendant *Gresbam*, with costs both at law and in this court.

THO. PARKER.
LAW. CARTER.
JA. REYNOLDS.
CHA. CLARKE.

POPPLEWELL
against
HATFIELD;
et contra.
The issues as to
Bramwith Hall
taken *pro con-*
fesso.

The bill as a
gainst *Gresbam*
dismissed.

SNEYD *against* UNWIN.

HILARY TERM
14. GEO. 2.

Essex, 29th January 1740.

THE rector of *Henningham Sible*, in the county of *Essex*, claimed the tithes in kind of all hops, from *Lady Day* 1739, arising on a piece of ground called *Broom Leyes*, about eight acres, in the same manner as his predecessors had been and he was entitled to the same; and stated, that the said manner and mode of tithing hops was, "by receiving on the hop grounds where the same arise the tenth measure or weight after they are plucked from the stalks, and before they are dried or packed;" and that it is incumbent on the occupiers of all hop grounds in the said parish to gather all the hops from the poles or hills before the tithe is set out by such measure or weight, in regard the said tithes are not severed until the hops are severed; that it had been customary for the plaintiff's predecessors and for the plaintiff to agree to take a satisfaction in money, in lieu of the tithe of hops, as near the value as they could; that for the year 1739 he came to an agreement with all the occupiers of hop grounds, except three or four from whom he had received compositions; but that the defendant had refused to accede to such proposal, and insisted upon setting out his tithe hops by the tenth hill or pole; and that the plaintiff should cause the same to be picked at his own charge; which he refused to do. The bill therefore prayed an account and satisfaction for the value of the tithe of hops for that year.

The defendant admitted, that the plaintiff was rector of the parish, and entitled to the tithes of hops in kind; that he was at *Lady Day* 1719, and had been ever since 1715, possessed of *Broom Leyes*, which contained better than five acres; and that he had planted the same with hops; that he had occupied the said ground from *Lady Day* 1739 until the plaintiff became entitled to the tithe of the hops growing thereon, and until the hops grow-

The manner in
which the tithes
of hops are to be
set out in the pa-
rish of *Henning-*
ham Sible; in *Es-*
sex.

See *Sneyd v.*
Unwin, post.
9th June 1752,
Trinity Term,
26. Geo. 2.

SNEYD
against
UNWIN.

ing thereon, except the tithe hops, had been picked, dried, and bagged : And he said, that he had set out the tithe of the said hops, so growing on *Broom Leyes*, by the tenth pole or hill ; and that when he intended to begin to pick, he gave the plaintiff notice thereof, and desired him to send to see his tithes set out ; that the plaintiff thereupon insisted, that the said hops should be gathered from the vines or binds at the defendant's charge, and that the tithe thereof should be set out by measure after they were so gathered ; that he had refused to send for the tenth pole so set apart for the tithe of the said hops. The defendant further said, that he had caused the same to be set out before two witnesses, by the tenth pole, for the plaintiff's tithes, and had severed the same from the roots, and stripped the vines from the poles, and left them on the ground for the plaintiff's use ; but that he had neglected to take the same away ; and he insisted, that there is an ancient usage prevailing in the said parish, whereby the rectors are obliged to accept their tithe hops by the tenth pole or hill after the vines are severed from the ground, and stripped off the poles ; and that the said rectors were, and the plaintiff was, obliged to pick all his tithe hops ; but he said that it had been customary for the plaintiff's predecessors, and also for the plaintiff, for several years past, to agree with the occupiers of hop grounds in the said parish to take money, in lieu of tithe hops, as near the value as they could before they were picked ; and he set forth the quantity and value of the said hops for that year.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading several proofs in the cause ; an agreement, signed *R. Sneyd*, dated the twenty-sixth of *August 1738* ; a decree in a cause *Chitty v. Reeve* (a), dated the twelfth of *July, Trinity Term*, in the fourth year of *James the Second* ; a decree in the cause of *Gee v. Perch* (b), dated the seventeenth of *November 1698* ; another decree in the cause of *Gee v. Perch* (c), dated the eleventh of *May 1704* ; another decree, in the cause of *Bliss v. Chandler* (d), dated the eighteenth of *November 1720* ; and upon full debate ;

THE COURT directed an issue to try, before a special jury, " Whether, by the usage in the parish of *Henningham Sible*, hops are to be tithed before they are picked from the stalk."

A trial was accordingly had, and a verdict found against the usage ; and on the sixteenth of *November 1741*, on reading the *postea* ;

THE COURT declared that the custom of tithing hops within the parish of *Henningham Sible* is after the same are picked ; and decreed the defendant to account for his tithe hops for 1739, with costs at law and in equity.

(a) Vol. I. page 251.
(b) Vol. I. page 386.

(c) Vol. I. page 436.
(d) Ante, page 146.

SANDFORD *against* DOWSET.*Essex*, 26th June 1730.TRIN. TERM,
4. GEO. 2^d

THE bill stated, that the warden and scholars of *Saint Mary's College*, in *Oxford*, being seised in fee of the parsonage and vicarage impropriate of *Hornchurch*, in the county of *Essex*, and of all great and small tithes arising therein, did, by indenture, dated the seventh of *March* 1720, demise all their tithes of corn, hay, and other things, on the north part of the highway leading from *Brentwood* to *Chadwell*, and so towards *London*, being in *Havering*, in *Hornchurch* (except all such tithes anciently demised to the farmers of the tithes of the chapel of *Romford*, and of the rectory of *Hornchurch* aforesaid), to *J. Fermyn*, his executors, &c.; that the said *J. Fermyn* being so possessed did, by indenture dated the eighteenth of *July* 1715, assign over to the plaintiff all his interest therein; that the plaintiff, in right thereof, and by virtue of other subsequent leases from the said college, became entitled to receive the said tithes, or some *modus* in lieu thereof; that the defendants had ever since held and occupied therein several fields of meadow, pasture, and arable ground, whereon corn and hay had arisen, and had depastured several cattle, for which he had demanded tithes; but that the defendants had refused to pay them under various pretences. The bill therefore prayed a satisfaction for the same.

The impropriators of the parsonage and vicarage of *Hornchurch* demand the tithes in kind arising in *Havering*, in the said parish, and particularly in *Havering Park*.

The defendants admitted, that the plaintiff might hold under the college, as stated in the bill; but denied that he was entitled to all the tithes of corn, hay, and other increase arising on the said grounds; and they set forth the several lands they occupied in the parish, but gave no account of the tithes thereof; and averred, that the said lands had been formerly part of *Havering Park*, now disparked, and parcel of the ancient *demesnes* of THE CROWN; that the said grounds were also parcel of a fourth part of the inclosed land, called *Havering Park*, now separated from the other three-fourth parts of the inclosed lands belonging to the mansion-house of the manor of *Havering Bower*; that the said lands were, by letters patent, in the eleventh year of the reign of *George the First*, granted to *J. Seyboyn* and *T. Farrington*, in trust for the sons of *Robert, Duke of Ancafter*, deceased, to hold to them, their executors, &c. for thirty-one years, paying fifty-three pounds, thirteen shillings, and fourpence a-year rent; that the reversion is now in his present majesty; that the other three-fourth parts of the said inclosed lands were granted to other persons by *William and Mary* under a yearly reserved rent; that *Sir Jeffrey Palmer*, attorney-general to *Charles the Second*, on behalf of his majesty, did, with *John Speller* and others, exhibit their bill in this court against the said warden and scholars of *Saint Mary College*, in *Oxford*, and others, setting forth, that his then majesty, and all his predecessors, time out of mind, had been,

The defendants say, that the park, now disparked, was the ancient *demesne* of the crown.

SANDFORD
against
DOWSET.

and that there
is payable one
buck and one
doe yearly, in
lieu of the tithes
thereof.

The cause
heard.

and that his then majesty was seised, in his *demesne as of fee*, in right of his crown, of the manor of *Havering Bower and Park*, and several messuages therein, freed from all manner of tithes whatsoever, and in lieu thereof paid one fat buck and doe yearly, at their respective seasons, to the parson and proprietor of the said church; and prayed that the said custom might be examined in court; that the college and *Thomas Jermyn* put in their answers; that the defendant *Wells* claimed the *small tithes* of *Havering* by grant from the college; that the said *Wells* confessed, that he had demanded tithes of the plaintiffs, who occupied the said lands, and that he had sued them in the archdeacons court of *Essex*; that the plaintiffs replied; the defendants rejoined; and witnesses were examined; that the cause was heard on the fourth of *February* 1666; that THE COURT ordered an injunction to stay the proceedings in the archdeacons court, and all future proceedings in the spiritual court, and declared themselves satisfied with the *modus* upon the proofs then read; that the defendants desired that it might be referred to a trial at law upon an issue directed; but that such trial was never had. The defendants therefore submitted to the court, whether, after this length of time, the said issue ought not to be taken as found for the *modus*; and whether his majesty and lessees ought not to have the benefit thereof. They also stated, that since such disparking of the said park, the tenants of the other three-fourth parts had paid yearly one fat buck and doe at their respective seasons, or five pounds in lieu thereof, to the college, or their tenants; and that by agreement, at such disparking, the same was laid wholly on the said three-fourth parts, and the other fourth part discharged from the payment of any part thereof. They further stated, that all the said lands by them occupied had been, time out of mind, held by his now majesty and his predecessors, and their lessees, freed from the payment of all manner of tithes in kind, save the *modus* of the buck and doe in their seasons, or five pounds in lieu thereof; and that therefore the college and their lessees ought to hold themselves content therewith, and cannot by law demand any tithes in kind, or any satisfaction in lieu thereof, save the said *modus*. And they insisted, that the warden and scholars being lay proprietors could not by law demand any tithes of which they had never been in possession, and more especially for that the lands are parcel of the *ancient demesnes* of the crown; and that therefore they had refused to pay the plaintiff tithes in kind, the premises being exempt from payment thereof as aforesaid, or by some other lawful means.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and on reading the answer, and hearing counsel,

THE

THE COURT ordered the defendants to account for the tithes of corn, hay, and other titheable matters and things, which had arisen in the several lands occupied by them in *Havering*, in the said parish of *Hornchurch*, and the titheable places thereof (except such tithes as in the said bill are excepted) during the time demanded by the bill.

SANDFORD
against
DOWSET.
The tithes in
Havering de-
creed.

The deputy made his report ; and the cause came on, on the twenty-seventh of *January* 1731, for further directions ; when upon reading the decree and report, THE COURT ordered the report to be ratified and confirmed with costs, and the defendants to forthwith pay to the plaintiff the several sums reported due.

The deputy's re-
port confirmed.

JAS. REYNOLDS.

LAW. CARTER.

J. COMYNS.

WM. THOMSON.

RUDGE against CHAPMAN.

Northamptonshire, 15th June 1741.

TRIN. TERM,
15. GEO. 2.

THE bill stated, that the defendant *Chapman*, as rector of *Braybrook*, in the county of *Northampton*, had, in *Trinity Term*, in the twelfth year of his late majesty, filed his bill against *Rudge* and others, owners and occupiers of several lands then inclosed, and which formerly had been parcel of two open and common fields, called *Lotchland Field* and *Blackland Field* or common ; that the said rector thereby insisted, that he was entitled to several parcels of land lying in the said fields, or to one of them, as his glebe, the same, at the time of inclosing the said commons, having been allotted to the rectors of the said parish, as their glebe ; that the defendants, or some or one of them, were then in possession of the same, and had refused to deliver the same up to him ; that the said rector, in his said bill, likewise insisted, that he was entitled to a *right of common* in the said fields, and to take and receive the tithes in kind of all the grafs or hay growing within the said parish or the titheable places thereof ; that the defendants, by their answers, denied that he was entitled to any parcel of lands lying in the said fields as his glebe, or to any *right of common* therein, or to the tithes of any grafs or hay within the said parish ; and insisted, that he and his predecessors, rectors there, had, time immemorially, enjoyed a certain piece of ground, called *the Dole*, lying in the said parish, in lieu of all the tithe hay arising therein ; that the said rector replied, the defendants rejoined, and witnesses were examined on both sides ; that the cause came on to be heard the fourth of *November* 1731 ; and that it was ordered, that so much of the said bill as related to the demand of *glebe, right of common*, and *tithe hay*, should be dismissed with costs. The plaintiffs therefore, by the present bill, prayed, that the said piece of ground, called *the Dole*, might be decreed to be a good *modus* in lieu of the tithe hay arising within the parish, and be established

The rector of
Braybrook, in
Northampton
shire, does not
enjoy the lands
called *the Dole*,
in lieu of the
tithe hay arising
on the common
fields of the pa-
rish.

S.C. Comy. 697.

RUDGE
against
CHAPMAN.

as such against the said defendant and his successors ; that the plaintiffs and all claiming under them might, by the decree of this court, be quieted in the possession of their purchased premises ; and that the defendant and his successors might be enjoined, by the injunction of this court, from commencing any future suits at law or in equity touching the said pretended claim and demands.

The defendant *Chapman*, as rector of *Braybrook*, admitted the former suit and proceedings ; but insisted, that the bill was dismissed without prejudice to his right, and that he and his predecessors were well entitled to the said *glebe, right of common, and tithe hay*, arising within the parish.

The *Bishop of Peterborough* said, that he, as bishop of the diocese, was ordinary of the rectory of *Braybrook*, and was willing that the *modus* should be established in lieu of the tithe hay arising therein, if the Court should think fit.

The plaintiffs replied to the defendant *Chapman's* answer, and the rector rejoined, and witnesses were examined on both sides ; and the cause came to be heard on the twenty-eighth of *June* 1739 ; when upon hearing counsel, the defendant *Chapman's* counsel objected against the plaintiffs proceeding for want of proper parties ;

THE COURT ordered the cause to stand over, with liberty to the plaintiffs to amend their bill, by adding parties, with proper charges, on the plaintiffs first paying to the defendant five pounds costs for this day's attendance.

The said costs were accordingly paid, and the plaintiffs amended their bill by adding *J. Hopkins*, the heir at law to the testator *John Hopkins*, deceased, a defendant thereto, as likewise *C. Horton*, and several other persons, who were all the rest of the landholders in the said parish, requiring them to answer the premises ; and that they might shew cause, if they could, why the said *modus* should not be established.

The defendants appeared and answered ; and the defendant *J. Hopkins* said, that he was heir at law to the testator *J. Hopkins*, deceased ; and he and the other defendants said, that they believed, that the rectors of the said parish were not entitled to the tithe hay in kind arising therein, but that they had in lieu thereof, for time immemorial, enjoyed, and of right ought to enjoy, *the Dole* ; and hoped that the said *modus* should be established by the decree of this court.

Soon after putting in the said answer, the plaintiff *Rudge* died ; but his son revived the suit ; and the cause came on to be further heard on the fifteenth of *June* 1741 ; when upon hearing counsel ; and reading the depositions of several witnesses taken
on

on both sides, and likewise in the former cause; and on debate of the matter;

RUDGE
against
CHAPMAN.

THE COURT directed a trial at law before a special jury; the issue is to be, "Whether there be such a *real composition* in lieu of "all the tithe hay arising within the parish of *Braybrook* and "the titheable places thereof, as set forth in the bill?"

The said issue was accordingly tried; when after hearing evidence on both sides, and on long debate, a verdict was given for the defendant *Chapman*, "that the said *Robert*, and all his predecessors rectors of the rectory of *Braybrook* for the time "being, from time whereof the memory of man is not to the "contrary, have not had and enjoyed, nor ought the said "*Robert*, as rector as aforesaid, to have and enjoy the piece or "parcel of ground, called *the Dole*, lying in the said parish, "for, and in lieu and satisfaction of all the tithe hay annually "arising and renewing within the titheable places thereof, in "manner and form as the said *E. Rudge* and others do within "complain."

THE COURT accordingly, on the eighth of *November 1742*, ordered the defendants to be dismissed of and from the said bill, and all the matters and things therein contained, with their costs at law and in equity,

COMER against CLARKE.

HILARY TERM
15. GEO. 2.

Surry, 4th February 1741.

THE bill stated, that the chapelry of *East Moulsey*, in the parish of *Kingston*, in the county of *Surry*, extends itself into the manor of *East Moulsey*, or *Matham Manor*, and also into the manor called *Moulsey*, or *the Priory Manor*; that by virtue of a composition made in the year 1374, between *Robert de Wyndesor*, prior of the monastery or priory of *Merton*, within the diocese of *Winchester*, and the convent of the same place, who were then seised of the rectory impropriate of *Kingston*, and, together with the vicar, were entitled to all great and small tithes whatsoever arising within the same, for themselves and their successors of the one part, and *Robert De Bookenball*, vicar of the said church of *Kingston*, for himself and his successors vicars of the said church, of the other part, and confirmed by *William of Wickham*, bishop of *Winchester*, under his episcopal seal, the twenty-seventh of *November 1377*, IT WAS AGREED, that the said *Robert de Bookenball* the vicar, and his successors, should receive for ever all oblations made to the said church and to the chapels thereto belonging, and also the tithes of cows, calves, kids, pigs, conies, and all other wild animals, hens, pigeons, swans, peacocks, geese, ducks, and all other fowl; and of milk, cheese, bees, honey,

The chaplain of the chapel of *East Moulsey*, in the parish of *Kingston*, in the county of *Surry*, is entitled to the small tithes arising in that part of the manor of *Matham* which lies within the chapelry of *East Moulsey*.

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against
CLARK.

honey, wax, and eggs, throughout the said parish of the said church and chapels; and of all sorts of seeds, herbs, garden stuff, fruits, gardens, and curtilages, bees, honey, wax, and eggs, together with the tithes of all wood, and of all mills then built or to be built thenafter, *Easter* offerings, and other offerings, and all other tithes personal and mixed, and all vicarial tithes, duties, and payments whatsoever, and of what nature and kind soever, arising within the said parish and chapelry (except the tithes of eight cows, three sows, five geese, five ducks, ten hens, and two hundred sheep, of the prior and convent, and their farmers of the manor of *Moulsey*, and also except the tithe of a mill then in the hands of the said prior and convent, or their farmers, and fishing in the water thereunto belonging, and also the pigeon-house to the said prior and convent in *Moulsey* belonging. AND IT WAS ALSO AGREED, that the vicar for the time being, and his successors for ever, should provide a sufficient chaplain to perform divine service in the said chapel of *Moulsey*. The bill then proceeded to state, that the plaintiff *J. Thomas*, clerk, on the appointment of the plaintiff *Comer*, as vicar of the said parish-church, obtained a licence from the late *Bishop of Winchester*, dated the fifth of *May* 1732, whereby he was confirmed chaplain of the said chapel of *East Moulsey*, and was thereupon put in possession by the plaintiff *Comer*, as vicar of the said parish, and that he still continued chaplain of the same; that, by agreement entered into between them at the time of the appointment, IT WAS AGREED, that the plaintiff *Thomas* should receive to his own use, instead of a salary or stipend for officiating to the said chapel, all the aforesaid tithes, dues, duties, offerings, and profits whatsoever, belonging to the said chapelry of *East Moulsey*, in as ample manner as the said plaintiff *Thomas*' predecessors had enjoyed the same, without rendering an account to the plaintiff *Comer*. That therefore either the plaintiff *Comer*, as vicar of the said parish-church, or the plaintiff *Thomas*, as chaplain of the said chapelry, or by virtue of the said agreement, are entitled, or ought to have all the tithes, dues, and profits whatsoever, belonging to the said chapelry, as the former vicars and chaplains had enjoyed the same, or have had compositions in lieu thereof, as in the bill are mentioned; that ever since the date of the said indenture and confirmation thereof, and for time immemorial, the vicar of the said church, or chaplain of the said chapelry, received the tithes of all cows, calves, milk, sheep, goats, pigs, lambs, wool, flax, and agistment, hens, ducks, geese, and pigeons, and all other fowls, and rabbits, and all sorts of seeds, herbs, garden stuff, fruits, gardens, and curtilages, bees, honey, wax, and eggs, and the tithes of all woods and mills, and other personal and mixed tithes, yearly arising within the said parish or chapelry, in their proper kinds, or certain payments in lieu thereof, and also *Easter* offerings, and all other offerings, dues, and profits, belonging to the said chapelry,

or

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CLARKE.

or certain payments in lieu thereof; that in the year 1679, Sir J. Clarke, under whom the defendant claims his estate, and the rest of the then inhabitants of *East Moulsey*, came to an agreement with R. Comyn, then chaplain, to pay him certain yearly respective rates in lieu of their small tithes, dues, duties, and offerings therein mentioned, and did agree to pay to the said Comyn fifteen pounds *per annum*, in lieu of all vicarial tithes, which he duly paid, and therefore let their farms and mills free from the payment of small tithes; and that the defendant constantly paid the same to the chaplain for several years, as a composition for the same; that the defendant had been, ever since Michaelmas 1731, and still is occupier of a farm, consisting of a capital messuage, with large gardens, orchards, meadow and pasture grounds, and woodlands, lying within such part of the said *Matham* and *Priory manors* as extend themselves into *Kingston* parish, and had yearly fed cattle upon the said meadow and pasture grounds within the said chapelry, and had milk, calves, lambs, wool, pigeons, poultry, eggs, bees, wax, honey, pigs, garden stuff, roots, and herbs, and cut down wood; and that fourpence a head was due for *Easter* offerings from the defendant and his family yearly, and other small tithes; that in the year 1732, the defendant paid the plaintiff *Thomas* fifteen guineas for the first year and half tithes after the plaintiff *Thomas's* licence, and proposed to pay ten guineas a-year, which he was then willing to accept, neither of the plaintiffs having at that time been informed of the said composition; that tithes in kind of all the several matters aforesaid, or any of them, had not been paid by the defendant to the plaintiffs from the twenty-ninth of September 1733, nor the fifteen pounds in lieu; that he now refused to account for or pay either of them, and had caused the plaintiff *Thomas* to be rated for his small tithes to the land-tax for 1739. The bill therefore prayed, that he may discover and be compelled to pay the plaintiffs, or one of them, the said fifteen pounds a-year, in lieu of small tithes, and the arrears thereof, or account for all small tithes and offerings, and pay the arrears for the time to come,

The defendant said, that the plaintiff *Comer* is the vicar of *Kingston*, and the plaintiff *Thomas* chaplain or minister of the chapel of *East Moulsey*, as stated in the bill; that he knew not whether ever such composition had been made between the prior of *Merton* and the then vicar of *Kingston*, and confirmed by the then *Bishop of Winchester*; that the plaintiff *Thomas* was duly appointed chaplain of the said chapelry; but he denied that the plaintiffs, by virtue of the said composition, are become entitled, and ought to have the tithes, or any composition in lieu thereof; for that all the garden land and orchards that he now keeps, or any year before and since the plaintiff *Thomas* was chaplain there, had kept in his own hands, are all situate in the manor of
Moulsey

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against
CLARKE.

Moulsey Matham, and not in *Moulsey Prior*, save some meadow and arable situate in the manor of *Moulsey Prior*; and that HE is entitled to the tithes thereof. He also said, that ever since *Michaelmas* 1731 he had been proprietor of a farm, gardens, orchards, and lands, in the manor of *Moulsey Matham*, within the chapelry of *East Moulsey*; that he was the owner of the tithes thereof of all kinds, and had never agreed to pay any composition for the small tithes; but he said, that he could not set forth what part of the said farm and lands lies in the manor of *Moulsey Matham*, and what in *Moulsey Prior*; but that the greater part thereof lies in *Moulsey Matham*.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, during which the defendant's counsel objected, that his majesty's attorney general ought to be made a party; and hearing the plaintiff's counsel in answer; and reading, out of a book of the endowments within the bishopric of *Winton*, the endowment of the vicarage of *Kingston*, dated the twenty-seventh of *November* 1377; and reading several depositions; two indentures of lease, signed *J. Clarke*, dated the first of *October* 1723; the assessment on the inhabitants of *East Moulsey* in 1739 to the land tax, and the land of *J. Clarke* the defendant to it; the answer; and reading for the defendant a grant from *Charles the First*, in the seventh year of his reign, to *R. Freeman* and others, of the manor of *Moulsey Matham*; an indenture, dated the twenty-third of *June* 1632, signed *R. Freeman, &c.*; the like of the eleventh of *April* 1646, signed *M. Litrot* and others; the like of the thirtieth of *March* 1647, signed *H. Puckering*; the deposition of *Dame M. Clarke*; the deposition of *Dr. J. Clarke* on his cross examination; and on producing the depositions of *G. Clarke* and *E. Fuller*, which were objected to, and refused to be read; and reading several other depositions; and on hearing what was alledged by the counsel on both sides; and on full debate of the matter;

THE COURT ordered the bill to be dismissed as to the demand of *small tithes* out of the *Priory manor*, without prejudice, the plaintiffs waiving that demand.

THE COURT also directed a trial at law upon the two following issues, to be tried at the bar of this court by a special jury of the county of *Surry*:

FIRST, Whether the plaintiffs are, or either of them is, entitled to the *small tithes* arising within that part of the manor of *Matham* which lies within the chapel of *East Moulsey*?

SECONDLY, Whether the defendant *Clarke* is entitled to the *small tithes*?

The

The plaintiffs and defendant on the twenty-eighth of *April* last agreed, that the issues should be taken *pro confesso* against the defendant; that in case an account should be decreed against the defendant, the sum to be accounted for should be thirty-one pounds ten shillings; but that the costs, both at law and in this court, should be left to the consideration of the Court; and on the twenty-first of *May* 1742, the said agreement was made an order of this court; and it was decreed, that the same should be observed and performed by all parties according to the intent and meaning thereof.

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against
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The cause came on to be heard upon the equity reserved, on the twenty-fourth of *May* 1742; and upon reading the decree, agreement, and order; and hearing counsel on both sides;

THE COURT decreed, that the plaintiff's right to all small tithes arising within that part of the manor of *Matham*, which lies within the chapelry of *East Moulsey* in the vicarage of *Kingson*, be confirmed and established according to the said agreement; and that the defendant do pay to the plaintiff *Thomas* thirty-one pounds, ten shillings for the value of the small tithes and *Easter* offerings, due from the said defendant within that part of the manor of *Matham* which lies in the said chapelry of *East Moulsey*, during the time demanded by the bill, pursuant to the said agreement, with costs at law and in equity, so far as relates to the subject matters of the issues directed, and the demand of the above tithes.

LAW. CARTER.
JAS. REYNOLDS.
THOS. ABNEY.

VINCENT *against* ORME.

Warwickshire, 13th *May* 1742.

EASTER TERM
15. GEO. 2.

THE plaintiffs, as owners and occupiers of divers tenements and parcels of land, lying within the vicarage of *Lower Eatington* and *Over Eatington*, in the county of *Warwick*, stated, that the plaintiff *T. Vincent* occupied two yard lands, one quarter, and half a quarter of a yard land in *Over Eatington*; that the plaintiff *L. Gunter* is the owner, in fee simple, of one half of the said yard lands; that the plaintiff *J. Vincent* and *E.* his wife, are owners, in fee simple, of another of the said yard lands; that the plaintiff *W. Strikley* is owner, in fee simple, of the other quarter and half quarter of a yard land, in the occupation of the said plaintiff *T. Vincent*; that the plaintiff *W. Sly* is occupier and owner, in fee simple, of three quarters of a yard land in *Over Eatington*; that the plaintiff *J. Collett* is the

The landholders in the vicarage of *Lower Eatington* and *Over Eatington*, in *Warwickshire*, pay 2s. 6d. on the third of *May*, and another 2s. 6d. on the first of *August* yearly, to the vicar in lieu of small tithes of each yard land, and the right of common thereto belonging.

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like of half a yard land in *Over Eatington*; that the plaintiff *G. Gilkes* is the like of a quarter of a yard land in *Over Eatington*; that the plaintiff *A. Bacon* is the like of four yard lands in *Over Eatington*; that the plaintiff *W. Palmer* is occupier of five yard lands in *Over Eatington*, of which the plaintiff *M. Unit* is owner; and that the other plaintiffs are owners and occupiers of several other yard lands in *Over Eatington*, and the plaintiff *E. Canning*, with a right of common belonging thereto; that there hath been, time out of mind, yearly paid to the vicar of *Lower Eatington* and *Over Eatington*, the sum of five shillings, the one half on the third of *May*, the other on the first of *August*, as a *modus* for the small tithes yearly growing and arising from each yard land, and the common belonging thereto, in the respective occupations of the plaintiffs in *Over Eatington* aforesaid, and after that rate, in proportion for every lesser quantity than a yard land, and the common thereto belonging; that the defendant hath been vicar of the said parish for thirty years past, and has constantly received the several *moduses* before mentioned, in satisfaction of all small tithes yearly growing, &c. from the several lands before mentioned, without any complaint, demand, or pretence of right to small tithes in kind, or any other *modus*, composition, compensation, or satisfaction for the same, until 1734 and 1735, when he insisted on seven shillings and sixpence for the small tithes of each yard land, which was complied with to prevent suits, and which he had committed against some of the plaintiffs. The bill therefore prayed, that the defendant might be restrained from proceeding against the plaintiffs in the ecclesiastical court, and that the said *modus* might be established.

The defendant admitted, by his answer, that he had been, for thirty years, vicar of *Lower Eatington* and *Over Eatington*, and that the plaintiffs were owners and occupiers of the several lands as in the bill mentioned; but he denied the custom as stated in the bill, or that he had constantly accepted the same, without complaint, and said, that soon after his induction, he had discourse with his parishioners, when they acknowledged that tithes in kind were due to him, and that he had in several instances received the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the part of the plaintiffs; when upon hearing counsel on both sides, and reading several depositions, the court directed a trial at law, to try, "Whether there hath been, time out of mind, yearly paid to the vicar of *Lower and Over Eatington*, the sum of five shillings, the one half on the third day of *May*, the other half on the first day of *August*, as a *modus* for the small tithes yearly growing and arising from each yard land, and the common belonging thereto, in the respective occupations of the said plaintiffs, in *Over Eatington* aforesaid, and after that rate in proportion for every lesser quantity than a yard land, and the common thereto belonging."

A trial

A trial was had, and a verdict was given for the plaintiffs; and the cause coming on upon the equity reserved;

VINCENT
against
ORMER.

THE COURT, upon hearing counsel for the plaintiffs, and reading the decree and *postea*, accordingly ordered the *modus* to be established, and that the defendant do pay the costs, both at law and in equity.

KNIGHT against WALKER.

Worcestershire, 15th July 1742.

TRIN. TERM,
16. GEO. 2.

THE rector of Ribbesford, in the county of Worcester, claimed all great and small tithes arising therein; and stated, that the defendant Walker occupied a certain messuage, orchard, garden, and coppice wood, and had cut several cords of wood, and converted them into charcoal, and had felled and sold shide wood and bark to a great value; that the defendant Smith also occupied a farm in the said parish; that the defendant Seager occupied Walbrooke Meadow; that Lord Herbert was patron of the rectory, as his ancestors had been before him; that several agreements had been made between the said patrons and the incumbents, respecting the payment of a sum in lieu of tithes; and that when the parson, with whom such agreement was made, thought it unreasonable, several disputes arose; that the plaintiff had frequently applied to the defendants to account with him for their tithes, but which they had refused, under several pretences, to do. The bill therefore prayed an account and satisfaction for the tithes and dues demanded by the bill.

The rector of Ribbesford, in Worcester-shire, enjoys seventy acres of land in lieu of the tithes of Ribbesford Farm and the demesne lands and coppice wood belonging to the manor of Ribbesford.

The defendant Walker admitted, that in the year 1738, he possessed Ribbesford Messuage, with the coppices and woodland within the manor; that in that year he had felled great quantities of wood and bark, and sold the same; and he said, that in case the tithes of such wood were due, the same was, according to the custom of that country, a twelfth part of the neat money. He also admitted, that Lord Herbert had felled some wood; and that he had received the several sums stated in his answer for wood felled, but he said that no part of the same was timber, but that it consisted of coppice wood and shoots from great timber trees; and he submitted, whether tithes were payable for the same. He also insisted, that several parcels of land had been anciently granted to the plaintiff's predecessors, and had been enjoyed by them time out of mind, in lieu of the tithes of the said capital messuage, the demesne lands of the manor, and of the said coppice wood, which is parcel of the said demesnes. He admitted, that the defendant Smith held Smeeth's Meadow and Cow Pasture; that they are no part of the demesnes; and that they are therefore subject to tithes.

The

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against
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The defendant *Smith* said, that he held *Ribbesford Farm*, by lease from *Lord Herbert*, free from all manner of tithes, and that the said farm is part of the demesnes of the manor of *Ribbesford*.

The defendant *Seagar* said, that he was tenant of *Walbrooke Meadow*, under the defendant *Walker*; and that *Lord Herbert* held the same some time in his own hands; that *Smeeth's Meadow* and *Cow Pasture* were taken from *Gation's Farm*, and added to *Ribbesford Farm*; and that the same were no part of the demesnes, but that tithes are payable for the same; but he insisted, that several parcels of land had been granted to the plaintiff and his predecessors in lieu of all tithes for the demesne lands; and that the custom of tithing in that country is two shillings in the pound, in lieu of tithes.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and reading the answers, and several depositions in the cause, the Court, by consent, directed a trial at law before a special jury, the issue to be, "Whether the lands, mentioned in the answer of the defendant *Walker*, were granted or enjoyed in full satisfaction of all tithes arising, growing, or renewing on the demesne lands and coppice wood in the said defendants answers mentioned?"

The issue was accordingly tried, and a verdict was given for the plaintiff, as to part of the lands, and for the defendants, as to other part of the said lands. The *posse* was indorsed, "that seventy acres, mentioned in the defendant *Walker's* answer, were granted and enjoyed in full satisfaction of all tithes arising, &c. upon the capital messuage with the appurtenances, and the several demesne lands and coppice woods belonging to the manor of *Ribbesford*, that is to say *Ribbesford Farm*, consisting of the *Gatehouse Meadow*, the *Meat Meadow*, the *Ox Leasore*, the *Brick Closes*, the *Broomy Grounds*, *Hale's Piece* or *Hollow Piece*, the *Double Still Piece*, *Jones' Hop Yard*, the *Old House Grounds*, *Wood's Grounds*, *Church Hill Piece*, *Lady Bowber*, *Blackstone Meadow*, and *Walbrooke Meadow*, and also the several coppice woods, called *Over Gladderheld*, *Lower Gladderheld*, *Middle Gladderheld*, *Long Trundall*, *Castle Hill*, *Cowell's Wawkhams*, *Horskill Hook*, *Gittins*, *Awbry's Pigeon House*, *Bind Sawman's Bank*, *Pig Gutter*, *Robin Wood's Hare Oak*, *Small Poles*, *Hobdy's* and *Abraham's Burgage*, as by the said defendants was therein alledged." "AND THAT the seventy acres of land, in the said defendant *Walker's* answer mentioned, were not granted or enjoyed in lieu of all tithes arising, &c. on the several coppices, called *Stagborough Beddoes*, *Gosly Moor*, *Noman's Bank*, *George's Coppice*, *Walbatch Banners*, and *Hales*, as the said plaintiff had therein alledged."

THE

THE COURT ordered *Walker* and *Smith* to account for the several titheable matters and things which they had arising, &c. on the several lands and tenements by them respectively occupied within the said parish of *Ribbesford*, during the time demanded by the bill, and which are not covered by the said *real composition* as aforesaid; and that the defendant *Seager* be dismissed, with costs, both at law and in equity.

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against
WALKER.

The deputy made his report, dated the sixth of *March* last, which, on the sixteenth of *July* 1745, was ratified and confirmed, but without costs, on either side, as to the defendants *Walker* and *Smith*.

JUSON against ASH.

TRIN. TERM,
16. GEO. 2.

Essex, 15th *July* 1742.

THE rector of the parish of *Wanslead*, in the county of *Essex*, claimed all tithes, offerings, and dues arising therein; and stated, that for the greater part of the sixteen years, during which he had been vicar, the defendant *Ash* had occupied many acres of ground, which had been converted from a *warren* into arable and pasture lands, and that he cultivated grain and other titheable matters thereon, but had refused, under several pretences, to pay the tithes thereof. The bill therefore prayed, that the defendant might set forth the limits and boundaries of the parishes of *Wanslead* and *Little Ilford*, and whether the same are not stated and described, in respect to the lands whereto the plaintiff lays claim of tithes; that, if he dispute the same, an issue may be directed for the trial thereof, and that he may be ordered to account and discover his titheable matters and things.

The rector of *Wanslead*, in *Essex*, is not entitled to the tithes of the lands which were formerly called the *Old Warren*; the said lands lying in the parish of *Little Ilford*.

The defendant *Ash* said, that *J. Lethulier*, deceased, was in his life time owner of *Aldersbrook House*, with the gardens and appurtenances thereto belonging, and of the *warren-house*, and divers lands and hereditaments lying in *Aldersbrook*; that the greater part was used by him, or his tenants, as *warren ground*, save only the capital house and gardens, with their appurtenances, and a parcel of meadow or marsh land, containing fourteen acres, and except the *Pale Fields*; that all the said premises do lie within the parish of *Little Ilford*; that upon the death of the said *J. Lethulier*, the same came to his son; that in the year 1721, the son diswarrened the greater part of the said *Aldersbrook Warren*, and inclosed and turned the same into arable and pasture land, and had corn and benefit of pasture therefrom; that in the year 1713, he leased of the then rector of *Little Ilford*, the great and small tithes of the said capital house, gardens, *Pale Fields*, and meadow, and the cow pasture, at four pounds, six shillings a-year, and had paid the same for several years;

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that

JURON
against
A. B.

that after he had diswarrened the greater part of the said warren, he, in 1722, took a lease of the said rector, of all manner of tithes, both great and small, of all the said land and ground so diswarrened, at seventeen pounds, and for many years paid the same; that in the year 1735, he let the last mentioned premises to the defendant, who had ever since held the same, and had had several crops of corn therefrom, and had paid the tithes thereof to the rector of *Little Ilford*; that after the said ground had been so diswarrened there then remained of the said warren a number of acres which is still called *the Old Warren*, and which he apprehends to be the same ground in the bill mentioned to have been lately converted from warren, and of which plaintiff claims tithes; that he the defendant had rented *the Old Warren* from *Lady Day* 1737, with liberty to destroy the rabbits, and convert the same into tillage; that he had so done, and had had several crops of corn, and other titheable matters therefrom, and had compounded for the tithes thereof with the rector of *Little Ilford*, for three pounds, six shillings, and sixpence, which he had paid, making, with the seventeen pounds, the sum of twenty pounds, six shillings, and sixpence; and he spoke as to the perambulations and boundaries of the said parishes.

The defendant *Finlay*, the rector of *Little Ilford*, put in an answer to the same effect as *A. B.*, and insisted that the tithes were due to him.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties;

THE COURT, by consent, directed a trial at law to be had, before a special jury, the issue to be, "Whether the lands " or any and what part thereof, out of and from which the " plaintiff demands tithes, lie within the parish of *Wanstead*, " or the titheable places thereof."

After a view had, and upon full evidence, a verdict was found for the defendant *A. B.*

THE COURT, on the twenty-sixth of *November* 1744, ordered the bill to stand dismissed with costs, both at law and in equity, for the defendant *A. B.*, and with forty shillings costs to the defendant *Finlay*.

MICH. TERM,
16. GEO. 2.

LAMB against TATTERSALL.

Surry, 7th December 1742.

The rector of *Chipstead*, in *Surry*, claims the tithes of wheat by the shock, apples, pigs, depasturing of horses, pease, wood, underwood, garden stuff, calves, lambs, milk, and wool.

THE rector of *Chipstead*, in the county of *Surry*, claimed the tithes of corn, grain, and hay, and all other tithes both great and small arising in the parish, and prayed, *inter alia*, that

the

the custom used therein of tithing wheat in the shock might be established.

The defendant said, that he had duly set out the tithes of his wheat in the sheaf, and given the plaintiff notice to fetch the same away, which he had refused to do; and he denied, that there was any custom in the parish, of tithing wheat in the shock. The defendant also said, that he had, since the eleventh of September, sheared several sheep, but that he could not set out the tithe wool thereof, at the time of shearing, because the sheep had been fed in the parish of *Ewell*, as well as in the parish of *Chippstead*, and he did not know what proportion of the tithe wool the said plaintiff was entitled to, or what part the minister of *Ewell* would insist on, and that he had therefore deferred setting out the same till it was weighed off for sale; and he averred, that that was the usual time of setting out and paying tithe wool. He also insisted, that he had paid his tithes of apples and pigs to the plaintiff. He also said, that he had not agisted any horses, except horses used for ploughing his said farm.

The plaintiff replied specially, and thereby waived his demand of the tithes of pigs and apples; the defendant rejoined; and witnesses were examined on both sides; and upon opening the pleadings, and reading the answer as to the said custom of tithing wheat by the shock;

THE COURT ordered the bill to be dismissed as to the tithes of apples and pigs, with costs, as to those demands, to the time of the replication; and as to the demand of agistment tithes for the horses used for the plough or management of his farm, with costs, so far as the proceedings relate to the said demand. But THE COURT ordered the defendant to account for the tithes of pease, wood, underwood, garden stuff, calves, lambs, milk, and wool, during the time demanded by the bill. The deputy to take the account, and to state any thing specially, but in particular to state specially what relates to the tithe of wool demanded by the plaintiff.

report as to the

As to the demand of tithe wheat, the Court ordered, that it be referred to a trial at law, "Whether the custom of tithing wheat, in the parish of *Chippstead*, is by the shock, or not?"

A trial was accordingly had by a special jury, and a verdict was found for the defendant, "that the custom of tithing wheat in the parish of *Chippstead*, was not by the shock, as the plaintiff had alledged." Now upon hearing counsel for the parties; and reading the decree, *posse*, and report;

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LAMB
against
TATTERSALL.

The defendant says, that he set out the tithe of his wheat in sheaves, and that there is no custom to set out the same in shocks;

that his sheep had been fed partly in *Ewell* and partly in *Chippstead*, and therefore could not set out the tithe wool on shearing day;

that he had paid tithes of apples and pigs; that the horses were used for the plough.

The bill dismissed, as to the tithes of apples, pigs, and horses used for the plough.

The tithes of pease, wood, underwood, garden stuff, calves, lambs, milk, and wool decreed.

The deputy to make a special wool.

An issue directed to try, whether wheat is to be set out in shocks.

A verdict, that it is not to be so set out.

THE

LAME
against
TATTERSALL.

THE COURT, on the fifth of *December* 1743, dismissed the bill, as to the tithe of wheat, with costs, both at law and in equity.

The bill dismissed, as to tithe of wheat.

The report confirmed with costs.

And the deputy having made his report, the said report was confirmed; and the defendant ordered to pay two pounds, nine shillings, and ninepence halfpenny, reported due for the tithes of pease, wood, underwood, garden stuff, calves, lambs, milk, and wool, with taxed costs, so far as the same relates to the tithes of pease, wood, underwood, garden stuff, calves, lambs, and milk, no costs being to be paid by either of the parties in relation to the tithes of wool, they having agreed to the tithe thereof, and waived the same.

MICH. TERM,
16. GEO. 2.

GANDY against BRYAN; et à Contra.

Gloucestershire, 15th November 1742.

The vicar of *Pucklerchurch*, in *Gloucestershire*, with the chapelries of *Westerleigh* and *Aboteston* annexed, is only entitled to moduses in lieu of the small tithes of certain ancient farms in *Wick* and *Abson*.

THE bill stated, that the plaintiff had, for eleven years past, been vicar of *Pucklerchurch*, with the chapelries of *Westerleigh* and *Aboteston cum Wick*, and then called *Wick* and *Abson*, annexed, in the county of *Gloucester*, and entitled to the small tithes, offerings, and duties arising within the said vicarage and the titheable places thereof; that the defendant *Bryan* had, for two years past, occupied a large estate at *Wick* and *Abson*; and that the defendant *Smith* had, for the like time, several estates therein and had many titheable matters thereon, but that they had refused to pay the tithes thereof, although in *April* 1733, and at several other times he had given them notice that he was dissatisfied with their compositions, and intended to take his tithes in kind; that in 1734, he had filed his bill against them for an account of their several titheable matters, and obtained a decree for the payment of tithes in kind (a). The bill therefore prayed, that the defendants might account for the several titheable matters demanded by the bill.

(a) This cause of *Gandy v. Bryan*, and others, came before the Court on the 27th of *May* 1736, Easter Term, 9. Geo. 2. The plaintiff stated, that he had then for nine years been vicar of *Pucklerchurch*, with the chapels of *Westerleigh* and *Aboteston cum Wick*, otherwise called *Wick* and *Abson*, annexed, and claimed all the tithes of hay and other small tithes in kind. The defendants admitted, that the plaintiff had officiated as vicar as aforesaid, but insisted, that *Westerleigh*, *Wick*, and *Abson*, were distinct parishes from *Pucklerchurch*; that they had separate parish officers; that the rates of all kinds were distinct, and independent of

each other; that there was no connection whatever between them; that their farms were not situated in *Pucklerchurch*, but in *Wick* and *Abson*; but they admitted, that the vicar had, in the month of *April* 1733, given them notice that he would no longer accept of the former payment that had been made in lieu of tithes. THE COURT, on the default of the defendant's appearance, ordered them to account for the tithes arising in the said vicarage and chapelries, unless they shewed good cause to the contrary, and on the fifth of *July* 1734, they not having shewn any cause, the decree was made absolute.

The

The defendants admitted, that the plaintiff officiated as vicar of *Pucklerchurch*, with the chapels of *Westerleigh* and *Aboteston*, but denied that *Wick* and *Abson* were part of or annexed to the said vicarage, or that he, as vicar, was entitled to the tithes in those chapelries, or to any *modus* in lieu thereof; for that in *Wick* and *Abson* there are several ancient farms, the occupiers whereof had immemorially paid at *Lady Day* and *Michaelmas*, to the vicar or his lessee, the following sums, as *moduses* in lieu of all tithes arising on the said farms, viz. for *Lewis Bryan's Farm* ten shillings a-year, by equal half yearly payments, as aforesaid, as a *modus* in lieu of all vicarial tithes; for *Ven's Farm*, ten pounds; for *James' Farm*, otherwise *Mr. Haynes'*, thirty pounds; for *Ely Bryan's*, twelve pounds; and for *Samuel Bryan's*, otherwise *Richard Mansell's*, seven pounds; and that the said sums had been accepted by the vicar, or his lessee, in lieu of tithes in kind.

GANDY
against
BRYAN;
et c. Contra.

The defendants with several others filed their *cross bill* against the vicar, to establish the said *moduses*.

The vicar denied that there were such *moduses*.

THE COURT, by the consent of the parties, ordered the said several ancient *moduses*, in lieu of all the tithes of hay, and all small and vicarial tithes and dues, arising from the said ancient farms respectively, to be confirmed and established, as alledged in the *cross bill*, and that the same be for the future observed in the said parish.

CRABB against HAYNE.

HILARY TERM
16. GEO. 2.

Dorsetshire, 25th February 1742.

THE rector of *Hammoon*, otherwise *Hammohan*, in the county of *Dorset*, claimed the tithes of hay made, and cattle depastured on a farm in the defendant's possession.

The rector of *Hammoon*, in *Dorsetshire*, claims the tithes of hay cattle.

and agistment of

The defendant said, that he occupied a farm in the said parish, from *Lady Day* 1739 to 1740, including four acres in another parish; that in the said year several acres were put up and made into hay; that he duly set out his tithe thereof in *grafs cocks*, according to the usual custom, time out of mind, practised in the parish; and that he had refused to give the plaintiff leave to make such *grafs cocks* into hay upon the ground; that it was usual in the summer season, when the *grafs* on their pasture grounds was too rank for the cattle to eat, to make it into hay, which was called *skimmings*; that he made some of that sort in that year, the tithe whereof he had set out to the plaintiff; and that the value of the tithe hay might be worth twenty pounds. He also said, that he did not know what

The defendant says, that he made a quantity of both hay and *skimmings*; that he set out the tithes of the *grafs* in *grafs cocks*; that he refused to let the rector make it into hay on the land;

**CRABB
against
HAYNE.**

and that he had
tendered what
was due for the
tithes of agist-
ment.

The cause is
heard.

number of cattle he had depastured or agisted, or what the tithe of such agistment was worth; and he set out his tithes of lambs, wool, apples, and rushes; and, setting out the value of his tithe hay and agistment, tendered the plaintiff sixteen pounds, sixteen shillings, for his agistment tithes.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and after hearing counsel on both sides, and reading the proofs taken in the cause, and on full debate of the matter;

The Court of o-
pinion, that the
rector has a
right to make
the grass cocks
into hay, on the
owner's land.

The tithe hay
decreed with
costs.

The costs, as to
the agistment
tithe reserved.

The report con-
firmed;

the defendant to
have his costs
as to the agist-
ment tithes.

THE COURT declared it to be their opinion, that the plaintiff, as rector of the parish of *Hammoon*, otherwise *Hammohan*, was entitled to make his tithe grass into hay, upon the defendant's lands where such grass grew; and thereupon ordered the defendant to account for the value of the tithe hay, during the time demanded by the bill, with costs; but it appearing he had made a tender of sixteen guineas for his agistment tithes before the filing of the bill, the costs, as to agistment tithes, were reserved till after the report was made of the sum due for such tithes.

The deputy (a) made his report on the eighteenth of *November* last; and the Court ordered the report to be ratified and confirmed, and the defendant to pay the sum reported due, with costs as to the tithe hay and skimmings; and the plaintiff to pay to the defendant his costs, as to the agistment tithes, the plaintiff having agreed to accept the tender.

T. PARKER.

LAW. CARTER.

JA. REYNOLDS.

CHAS. CLARKE,

(a) CHARLES TAYLOR, ESQ. *Deputy Remembrancer.*

EASTER TERM
16. GEO. 2.

HOLME *against* DRINKROW.

Yorkshire, 2d May 1743.

The impropria-
tor of *Steffing*,
in *Yorkshire*,
claims the tithes
of a parcel of
ground lying in
the manor of
Bir stall.

The defendant
says, the said
ground is not
within the rec-
tory of *Steffing*;

THE bill stated, that the plaintiff, for a few years past, had been seised in fee of the impropriate rectory of *Steffing*, in the county of *York*, and was entitled to the tithes thereof, both great and small; that the defendant, during that time, had occupied lands lying therein, from which he had several titheable matters and things, and prayed, that he might be decreed to account for the same.

The defendant admitted, that he occupied a messuage and five acres of pasture land in the parish, and also a parcel of ground adjoining to the township of *Steffing*, lying in the manor of *Bir stall*; and

and he insisted, that the lands lying within the said manor are not within the said rectory of *Skeffling*, for that the said manor anciently was a parish of itself, and never was annexed to the said rectory; and that no tithes, arising on the said lands, were payable to the impropiator of *Skeffling*; that the abbot and convent of the monastery of *Saint Martin Albemarle*, in *Normandy*, being seised of the said manor and of the lands occupied by the defendant, and of the tithes arising thereon, did, on the tenth day of *October*, in the eighteenth year of *Richard the Second*, grant the same to the abbot and convent of the monastery of *Kirkstall*; that they, by virtue thereof, continued seised of the said manor, lands, and tithes, till the dissolution of the said monastery, in the thirty-first year of *Henry the Eighth*, when the same became vested in THE CROWN; and that from the time of the dissolution of the same, his late majesty *Henry the Eighth*, and his successors, had been seised in fee of the said manor, lands, and tithes, till the thirteenth of *May*, in the eighth year of *William the Third*, when the same were granted to the *Earl of Portland* and his heirs, from whom the same had descended to the present *Duke of Portland*, by whom the same had been conveyed to *G. Crowle*, under whom the defendant held the said lands, as tenant thereof; that the several abbots and convents during their possession of the said manor and lands, and *Henry the Eighth*, and his successors, since the dissolution of the said monastery, and their several lessees, patentees, farmers, and tenants, and all claiming under them, had held and enjoyed the said manor, lands, and grounds freed and discharged from the payment of tithes; and therefore he insisted, that by virtue of the clause in the statute, of the 31. *Hen. 8.* he was not liable to the payment of tithes for the said lands, though they should appear to lie within the rectory of *Skeffling*, but which he did not admit: and he set forth the quantities, qualities, and values of the several titheable matters and things which had arisen on the said premises, during the time demanded by the bill.

The plaintiff replied; the defendant rejoined; and witnesses were examined on the plaintiff's behalf; and upon hearing counsel on both sides, and reading the proofs in the cause;

THE COURT ordered the defendant to account for the values of the several titheable matters and things, which he had on the said lands occupied by him in the rectory of *Skeffling*, or the titheable places thereof, during the time demanded by the bill, with costs, to be taxed. The deputy made his report, dated the eleventh instant; and on the twenty-second of *June 1744*, the same was confirmed with costs.

HOLME
against
DRINKWATER.

that the manor of *Birhall* was anciently a parish of itself; that the said manor belonged to the abbey of *St. Martin Albemarle*; that the abbey continued seised thereof till the dissolution; that it was conveyed tithe free to the landlord of the defendant;

and that the same having been held tithe free in the hands of the abbot at the time the abbey was dissolved, the said grounds are now tithe free by virtue of the statute 31. *Hen. 8. c. 12.*

The cause heard.

The tithes decreed.

HILARY TERM
35. GEO. 2.

CHAPMAN *against* KEEP.

Hampshire, 19th February 1741.

The rector of *Stratfieldsea*, in *Hampshire*, claims the tithes of sheep depastured.

THE rector of *Stratfieldsea*, in the county of *Hants*, claimed all manner of tithes in the said parish, from the twentieth of September 1736, and stated particularly, that the defendant, during that time, had taken in a number of sheep, and had wintered, agisted, or fattened them on his lands, the tithes of which he had refused to pay; and therefore he prayed, that he might be ordered to account for the same.

The defendant says, that the sheep were depastured on lands which had during the same year paid the tithes either of corn or hay, and that no tithes are payable in the parish of *Stratfieldsea*, for depasturing cattle on such stubble, or afterpasture.

The defendant stated, that he held a number of farms in the parish, one of which was his own, and the rest rented of another person; and he set forth the respective values thereof, and the numbers of the sheep which he had agisted thereon; but said, that he could not set forth a particular account of what profit he had made by wintering or fattening of sheep, not having kept any account thereof; and that the reason why he did not keep an account of, or pay the plaintiff the tithes of such sheep as he had wintered or fattened, was, because all the said sheep, which he had so wintered or fattened, were agisted and fed on lands which had paid tithes of corn or hay, to the plaintiff in the same year; and that there had been no instance in the said parish of tithes being paid or demanded, either by the plaintiff or his predecessors, for sheep wintered or fattened on lands which had paid tithes the same year; and he insisted, that no tithes are due by law for such sheep.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides, and reading the deposition of *William Wallis*, and upon full debate;

The bill dismissed, as to the tithes of sheep depastured on the stubble or after pasture.

The tithes of sheep, which had not paid tithes of wool and lambs, or which were depastured for hire on lands that had not before paid tithes, decreed.

THE COURT ordered the bill to be dismissed, with costs, so far as it related to the agistment tithes of sheep fed on stubbles and fields mowed, which had paid tithes of corn or hay the same year to the plaintiff.

BUT THE COURT ordered the defendant to account for the agistment tithes of sheep brought into and sold out of the parish, which had not paid to the plaintiff the tithes of wool and lambs; and of such sheep as were agisted in the said parish for hire, during such time as they were not depastured upon stubbles of corn, or upon fields mowed, whereof tithes had been paid to the plaintiff.

The costs and further directions to be reserved till after the report.

SMEE *against* COOK.MICH. TERM,
17. GEO. 2.*Essex*, 24th November 1743.

THE vicar of *Chisbull Magna*, otherwise *Upper Chisbull*, in the county of *Essex*, stated, that the parsonage and rectory of *Chisbull Magna*, was long ago appropriated to the abbot and convent of the monastery of *Walden*; that by the ancient books in the registry of the bishoprick of *London*, it appeared, that the vicarage thereof was very ancient; that it had an ancient endowment, and was appropriate to the said abbot and convent from the year 1239; that at that time an appointment was made for the better support of the vicar, whereby it was ordained that he should receive the small tithes, the tithes of hay, all oblations, four quarters of wheat, four quarters of barley, and four quarters of oats, out of the barn belonging to the said abbey, have the messuage and croft in the said endowment mentioned, and sustain "*omnia onera ordinaria ecclesie consueta*;" that afterwards by an instrument of augmentation dated the first *December* 1441, on the vicar's complaint to the bishop of *London*, that the profits of his vicarage were too small to support him, and the matter of the said complaint being duly examined, the bishop, with the consent of all parties concerned, ordained, that the said abbot and convent, as an augmentation to the said vicarage, should pay yearly to the then vicar, who was aged and infirm, for his life, a certain sum therein mentioned, by equal portions at *Midsummer* and *Christmas*, and forty shillings yearly to his successors for ever, at the said feasts; that the said sums were to be paid by the farmers of the said abbot and convent; and that the same was confirmed under the seals of the said bishop, and the abbot and convent, on the first of *December* 1441. The bill then stated, that the said abbey, and the lands, tithes, and possessions thereof came to THE CROWN, at the dissolution of monasteries in the reign of *Henry the Eighth*; that the said church and rectory were granted by *Henry the Eighth* to *Lord Audley*; that afterwards, by several mesne grants and descents, the same came to *John Cook*, the ancestor of the defendant; that the said *John Cook*, in the year 1662, presented *Robert Parr*, clerk, to the said vicarage; that the said *Parr* continued vicar there till the year 1690; that the said *Parr*, and all his predecessors, received yearly from the said impropriator the said annual payments of wheat, barley, and oats, or an annual sum in lieu thereof, and also the said forty shillings; that the said *Robert Parr*, whilst he was vicar, granted a lease thereof to the said *J. Cook*, who accepted the same; that on the said *Parr's* death, the then impropriator, in order to deprive the vicarage of its ancient rights, and of the said payments, did not present any vicar, but agreed to supply the cure of the said vicarage for an annual

The vicar of *Chisbull Magna*, in *Essex*, files his bill against the impropriator, stating,

S. C. 4. Bro.
P. C. 537.

that he was entitled to receive the tithes of hay, all small tithes, four quarters of wheat, four quarters of barley, and four quarters of oats, out of the impropriator's barn;

a certain sum at *Midsummer* and *Christmas*, and 40s. yearly.

that the former vicars had yearly received the said quantities of grain and the said 40s.;

that the vicarage was for some time vacant, and the cure supplied by the impropriator at 20l. a-year;

SWEET
against
Cook,

but that he the plaintiff, being afterwards presented thereto, was entitled to the said perquisites and annuity.

The impropriator denies that the vicar is entitled to the said quantities of grain, or 40s. a-year, or to any other profits than the small tithes.

The vicar, having discovered new evidence, and that the defendant Cook had sold the rectory to Wilkes, files a supplemental bill;

annual salary of twenty pounds, and procured a sequestration thereof under which, it continued without any lawful vicar almost forty years; that *John Ward*, clerk, was at the expiration of that period, presented thereto by *G. Wilcocks*, who had purchased of the defendant's father his interest therein; that the said *J. Ward* was instituted therein and continued vicar until *February 1721*, when he resigned; and that soon afterwards the plaintiff was presented by *J. Wilcock's* son, and had thereby become entitled to the rights and perquisites thereof, and particularly to the aforesaid annual payments; that he hoped the impropriator would have conformed thereto; that he had frequently applied to him for that purpose; but that he denied his right to the said corn and pension, under a pretence that the same had never been claimed by the plaintiff's predecessors. The vicar therefore prayed, that the defendant might answer the arrears of the said wheat, barley, and oats; that the said forty shillings a-year might be paid to him; that his right to the same might be established, and decreed to be paid and delivered for all time to come; and that the testimony of his witnesses might be perpetuated.

The defendant said, that he did not know, that the said parsonage and rectory was appropriate to the abbot and convent of *Walden*, nor that the vicarage thereof was an ancient vicarage, or had an ancient endowment, or that such appointment and augmentation had been made, or that the said abbey and the lands and possessions thereof came to the crown at the dissolution of monasteries, or that the said church and rectory were granted to *Lord Audley*. He admitted, that he was the present impropriator thereof, and that his father and ancestors had for many years enjoyed the same, but whether his grandfather, or any of his ancestors, had about the year 1662, presented *Parr*, or that *Parr* had granted the said lease, or that the said vicarage was under sequestration, as in the bill is mentioned, he knew not. He said, that he believed, that *J. Ward* was presented by *J. Wilcocks*; that *Ward* resigned, as stated in the bill; and that the plaintiff was presented by *J. Wilcocks*; but he denied, that he, as vicar, was entitled to the said annual payments of corn, and the pension from the impropriator, or to any other profits than the small tithes; or that his right to the said annual payments appeared by any deeds, writings, or accounts in his custody.

The plaintiff replied; the defendant rejoined; and witnesses were examined; but the plaintiff having discovered fresh evidence, the Court permitted him to file a supplemental bill, and to put new matters in issue; and the defendant Cook, pending the suit, having sold the impropriation to *N. Wilkes*, the new impropriator, was made a party to the supplemental bill.

The

The vicar, in his supplemental bill, said, that he had lately discovered and got into his possession a memorandum book of the defendant *Cook's* grandfather, and in which book are entered his accounts with his tenants, and his receipts and payments touching the said rectory, and particularly receipts given and signed by *J. Parr*, the then vicar, for the several quarterly payments of sixteen pounds a-year, in lieu of the said corn and pension of forty shillings, and continued down to the year 1684; that the defendant *N. Wilkes* had in his custody an agreement or lease, dated the eleventh of *June* 1680, made between the said *R. Parr* and *J. Cook*, whereby the said *Parr*, as vicar, demised to *Cook*, for three years, the said annual payments of corn and pension, reserving to *Parr* the yearly rent of sixteen pounds, and also had other leases to continue the same. The supplemental bill therefore prayed, that the defendants might set forth why they refused to pay the plaintiff's demands; and whether the name of *Robert Parr*, set to the receipts in the said book, are of his hand writing; and that the defendant *Wilkes* might leave the said agreement, &c. with his clerk in court, for the plaintiff's inspection, to examine witnesses thereto.

SHREE
against
Cook.

and says, that the impropriator has deeds and writings in his possession, shewing the several payments.

The defendant *Cook*, in answer to the supplemental bill, said, that he had perused the said book, but knew not whether the same was the book of his grandfather, or kept by him, or whose hand writing the receipts are of. He also said, that in the year 1738, he sold the rectory, together with other lands in the parish to *N. Wilkes*; but he admitted, that he had possessed the same some few years before; and insisted, that the plaintiff is not entitled to the demands, as claimed by his bill.

The former impropriator produces the writings and says, that in the year 1738, he sold rectory to *Wilkes*.

The defendant *Wilkes* answered to the same effect as *Cook* had done to the original bill; set forth the agreement of the eleventh of *June* 1680, which was to the purport as stated in bill; and admitted, that, by lease and release, dated the twentieth and twenty-first of *April* 1739, he had purchased the said rectory of *Cook*, and was then in possession thereof. He also said, that he had perused the book, and was not convinced by the same, that the payments mentioned therein had been made, they never having been paid by the defendant *Cook's* ancestors, and that therefore he believed that he had no right to the same.

Wilkes admits, that he had purchased the rectory, but denies the vicar's right.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides, and upon hearing counsel, and reading the endowment of the vicarage of the church of *Chisbull Magna*, the fourth of the ides of *May*, in the tenth year of the consecration of *Roger* bishop of *London*, in the registry book of the bishop of *London*; the instrument next before in the said book, being in 1355; the instrument immediately after, being in the twentieth year *Edward the Third*; an augmentation of the

The evidence read.

SMER
against
Cook.

the vicarage, in the same book, in the first of *December 1441*, by *Robert* bishop of *London*; the lease from *R. Parr* and *J. Cook*, dated the twenty-third of *February 1664*, signed *John Cook*; the indenture of agreement between the same parties, dated the eleventh of *June 1680*, signed *Robert Parr*; a memorandum under it "*Candlemas Day 1681*," signed "*Robert Parr*," and also a memento, signed "*John Cook*" and "*Robert Parr*;" and on reading several proofs in the cause; and several entries in a book marked *A*, being receipts signed *Robert Parr*, in 1683 and 1684; a paper writing of *Mr. John Cook's*, marked (*A*), relating to his receipts and disbursements upon the vicarage house, wherein the said annual payments of corn, and of the said forty shillings were mentioned; an entry in the book of acts and commissions of the bishop of *London*, of a sequestration to *Robert Pate*, of the said vicarage, on the thirtieth of *September 1685*; the defendant *Cook's* answer; a copy of the register of the burial of *R. Parr* and *G. Mead*; an extract from the registry of the consistory court of *London*; and upon full debate;

The Court decree the payments of the wheat, barley, oats, and 40s. a year to the vicar, and order *Cook* and *Wilkes* to account for the same during the time they were respectively in possession.

THE COURT established the said ancient annual payments of four quarters of wheat, four quarters of barley, four quarters of oats, and the said annual payment of forty shillings; and decreed the defendant *Cook* to account for the same, according to the value thereof, during the time he was in possession of the rectory, and the defendant *Wilkes*, from the time he purchased and came into possession thereof; with costs.

The vicar petitions for a rehearing and says, that as the payments of corn and money are a lien on the inheritance, *Wilkes* ought to have been decreed to pay the whole arrears.

The vicar petitioned the Court, alledging, that he apprehended himself aggrieved by so much of the said decree as directed *N. Wilkes* to account for the value of the yearly payments of corn, and the yearly sum of forty shillings, only from the time he had been in possession of the rectory; inasmuch as the yearly payments of corn and money are a lien and charge upon and do affect the estate and inheritance of the rectory; and as the arrears thereof are an incumbrance and charge thereon, and on the tithes and possessions thereof, into whose hands or possession soever the same shall come; and that therefore he was entitled to a satisfaction for all the arrears from *Wilkes*, as well before the time of his purchase, as since, especially as *Cook* was insolvent, and not able to answer or pay the same. The petition therefore prayed, that the cause might be reheard; and the said order so far varied, that *Wilkes* might be decreed to pay the value of the arrears, out of the rectory, from the time of the plaintiff's institution to the vicarage of *Chisbull Magna*. And on the fourth day of *February*, the cause was ordered to be reheard, as to the matter contained in the petition, upon the plaintiff's making the usual deposit of ten pounds.

The causes reheard.

The

The cause was accordingly heard on the sixteenth of *April* 1744, and also this day, the twenty-third of *April* 1744, and upon reading the petition; and hearing counsel; and reading the evidence and proofs, as at the original hearing; and upon full debate of the matter;

SMEE
against
COOK.

THE COURT decreed, that the former decree should be varied in the following manner; viz. the Court unanimously declared, that the yearly payments of four quarters of wheat, four quarters of barley, and four quarters of oats, and the said annual payment of forty shillings, demanded by the original and supplemental bills, and the arrears thereof, were a charge on the impropriate rector of *Chibull Magna*; and ordered, adjudged, and decreed, that the said payments should be thereby established for the future; that both *Cook* and *Wilkes* should come to an account with the vicar before the deputy remembrancer, for the arrears of the said several quantities of corn, according to the value thereof; and also for the arrears of the said annual payment of forty shillings, from the time the vicar was instituted and inducted to the said vicarage, and should satisfy and pay to him what should appear to be due for the same; and it was referred to the deputy to take the account; in the taking of which account, he was to distinguish what part of the said arrears accrued due in the time the said *Cook* and *Wilkes* had been respectively in possession of the said rectory, and was to make them all just allowances; and it was further ordered and decreed, that if *Wilkes* should pay, or should be compelled to pay any thing to the vicar, on account of any arrears which accrued due in the time of *Cook*; that then *Wilkes* was to be at liberty to prosecute that decree against *Cook*, in the name of the vicar, in order to reimburse himself what he should so pay on account of such arrears; and that all other parts of the former decree, not thereby varied or altered, should stand and be observed by all parties.

Cook and *Wilkes* decreed to account for all the arrears; *Wilkes* to pay what shall appear due both from *Cook* and from himself, and prosecute the decree against *Cook*, to reimburse himself for what he should pay on *Cook's* account.

From both these decrees the defendants appealed to the house of lords, and on the twenty-eighth of *November* 1745, the plaintiff's counsel informed the Court, that, on *Friday* the eighth instant, THE HOUSE OF LORDS, upon the petition and appeal of the defendants, complaining of a decree and order of the court of exchequer, the twenty-third of *April* 1744, made upon the rehearing of this cause, had made the following order, viz. "Die Veneris, 8th Novembris 1745, after hearing counsel " upon the petition and appeal of *Richard Cook* and *N. Wilkes* " complaining of a decree and order of THE COURT OF EXCHE- " QUER, of the twenty-third of *April* 1744, made upon the " rehearing a cause there, then depending, wherein *J. Smee*,

Cook and *Wilkes* appeal from both the decrees to the house of lords, and obtain an order that the decree made on the rehearing should be so far varied as that *Wilkes* should only account for such arrears of the said yearly pay-rectory.

ments as had accrued since the time he had purchased the

" clerk

SMEE
against
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" clerk, was plaintiff, and the appellants defendants, so far as
" the same, or either of them, directs that the appellants shall
" come to an account with the said *Thomas Smeë*, for the arrears
" of the several quantities of corn and money, from the time
" the said *Smeë* was instituted and inducted into the vicarage of
" *Chisbull Magna*, in the county of *Essex*, and so far as the
" said decree makes the appellant *Wilkes* liable to the payment
" thereof, before he became impropriator of the rectory of
" *Chisbull Magna*, and praying that the same may be reversed
" in those points; and that the appellant *Cook* might not be
" compelled to answer the said *Smeë's* demands, established by
" the said decree, but from the time of filing his original bill;
" and that the appellant *Wilkes* may not be compelled to an-
" swer the said *Smeë's* demands before he became the impro-
" priator of the said rectory, or that this house would make
" such other order for the appellant's relief, as to their lord-
" ship's great wisdom and justice should seem meet, as also
" upon the answer of the said *Thomas Smeë*, put in to the said
" appeal, and due consideration had of what was offered on
" either side in this cause, and hearing the unanimous opinion
" of the judges present, delivered by THE LORD CHIEF JUS-
" TICE of the court of common pleas, upon a point of law to
" them proposed, IT IS ORDERED AND ADJUDGED, that in the
" said decree, after "and" and before the words "satisfy and
" pay to the plaintiff what shall appear to," these words be in-
" serted "that the said appellants *Cook* and *Wilkes* do," and
" instead of the next word "be" insert "have been," and after
" the words "due for the same," these words "before the time
" of the appellant *Wilkes'* purchase; and that the appellant
" *Wilkes* do satisfy and pay to the respondent what shall appear
" to have been due for the same since the time of the said pur-
" chase," be there inserted; and that in the same clause of the
" said decree, after the words "arrears accrued due" these words
" "in the time the said defendant *Cook*, and the said defendant
" *Wilkes* have been respectively in possession of the said rectory",
" be left out, and instead thereof these words "before the time
" of the defendant *Wilkes'* purchase, and what part of the said
" arrears accrued due since the said time" be there inserted;
" and that in the next clause of the said decree, these words
" "in the time of the defendant *Cooke*" be left out, and instead
" thereof these words "before the time of the appellant *Wilkes'*
" purchase" be therein inserted; and it is further ordered and
" adjudged, that with these variations and additions the said
" decree and order be, and the same is hereby affirmed.
" *Ashley Couper*, clerk of parliament."

It was therefore prayed, that the said order of THE HOUSE OF LORDS, bearing date the eighth day of *November* last, may be made an order of this Court; and upon reading the said order,

THE

THE COURT ordered, that the said order of THE HOUSE OF LORDS be, and the same is hereby made an order of this Court; and that the several variations and additions mentioned in the said order of the house of lords, be made in the said decree of this Court, of the twenty-third day of *April* 1744.

SMEE
against
Cook.

THE COURT ordered the former decree be varied in the following manner: "The Court doth declare, that the yearly payment of four quarters of wheat, four quarters of barley, and of four quarters of oats, and the said annual payment of forty shillings demanded by the plaintiff's original and amended bills, and the arrears thereof, are a charge on the impropriate rectory of *Chisbull Magna*, AND ORDER, that the said payments be, and the same are hereby established for the future; AND THAT both the defendants do come to account with the plaintiff for the arrears of the said several quantities of corn, according to the value thereof, and also for the arrears of the said annual payment of forty shillings, from the time the plaintiff was instituted and inducted to the vicarage of *Chisbull Magna*, in the pleadings mentioned; AND THAT the said defendants *Cook* and *Wilkes* do satisfy and pay to the plaintiff what shall appear to have been due for the same, before the time of the defendant *Wilkes*' purchase; and that the said defendant *Wilkes* do satisfy and pay to the plaintiff what shall appear to have been due for the same since the time of the said purchase; AND THAT the deputy, in the taking of the said account, is to distinguish what part of the said arrears accrued due in the time the defendant *Cook*, and the said defendant *Wilkes* have been respectively in possession of the said rectory, before the time of the defendant *Wilkes*' purchase, and what part of the said arrears accrued due since the said time; AND THAT if the defendant *Wilkes* shall pay or be hereby compelled to pay any thing to the complainant on the account of any arrears that accrued due in the time of the defendant *Cook*, before the time of the defendant *Wilkes*' purchase, then the said defendant *Wilkes* is to be, and he is hereby at liberty to prosecute this decree against the defendant *Cook*, in the name of the complainant, in order to reimburse himself what he shall so pay on account of such arrears, but the said defendant *Wilkes* is in such case to indemnify the complainant against any costs and damages which may happen to him, by the said defendant *Wilkes* making use of his name as aforesaid; AND that the deposit be returned to the plaintiff and all other parts of the former decree, not hereby varied or altered, are to stand and be observed by all parties."

The decree varied according to the direction of the house of lords.

HILARY TERM
17. GEO. 2.

REED *against* OLIVER.

Northumberland, 22d February 1743.

The impropriator of the chapelry of *Birtley*, in *Northumberland*, claims the tithes in kind of corn and grain arising on the lands called the *Steel Fell*, *Broomhope Fell*, *Hindhaugh*, and *Fell Moor Common*.

THE bill stated, that *Sir Cuthbert Heron* and others, deceased, were severally and respectively, one after another, seised in fee of several estates, and particularly of the corn tithes yearly arising within the chapelry of *Birtley*, in the county of *Northumberland*; that the said tithes were very much neglected by them, they not being resident there; that the plaintiff, at the time of filing his bill, and for six years before, had been seised to him and his heirs of the said tithes of corn and grain, within the said chapelry; that the defendants, for several years, had occupied several acres of ground within the said chapelry, in certain parts thereof, called *Steel Fell*, otherwise *Steel Moor*, otherwise *Steel Common*; *Broomhope Fell*, otherwise *Broomhope Common*; *Hindhaugh*, otherwise *Calf Close*; and *Fell Moor Waste*, or *Common*, from whence they had reaped considerable quantities of corn and grain. The bill therefore prayed a discovery of the quantities and values of the tithes thereof and a satisfaction for the same.

The defendants deny the plaintiff's right to take the tithes in kind, and insist that 7s. 6d. for *Steel's Farm*; 4s. 2d. for *Broomhope Farm*; and 4s. 2d. for *Hindhaugh Farm* and *Calf Close* are payable yearly as *modus*, in lieu of the tithes thereof in kind.

The defendants said, that they believed that the said *Sir Cuthbert Heron*, *Sir J. Heron*, and *Sir Charles Heron*, deceased, were severally seised of some estate of inheritance, and amongst the rest of the corn tithes arising within the said chapelry; and that the plaintiff is now seised of the said tithes; but they denied, that the said tithes were payable in kind; and insisted, that the following *modus* were and had been immemorially payable yearly, in lieu of all the tithes of corn and grain which had been sown and reaped from off the lands, farmed by the defendants, viz. for *Steel Farm*, as well in-grounds as out-grounds, seven shillings and sixpence; for *Broomhope Farm*, four shillings and twopence; for *Hindhaugh Farm* and *Calf Close*, four shillings and twopence; and they denied, that the places called *the Steel*, *Broomhope*, *Hindhaugh*, and *Calf Close*, or any of them, were at any time within the memory of man, part of the said wastes or commons, as in the bill mentioned, but that the said several *Out-grounds* and *Ingrounds* of the respective townships and farms had been all along, beyond memory, occupied severally and distinctly by the owners of *the Steel*, *Broomhope*, *Hindhaugh*, and *Calf Close*, and their tenants, and were not taken in or inclosed from any waste or common; and that tithes in kind of corn and grain had never been paid for the same, but that the *modus* aforesaid had been constantly received by the plaintiff's predecessors.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the answers;

The defendant's counsel objected, that the owner of the moiety of the *Calf Close*, for which a *modus* is insisted on by the defendants, was not a party to this suit; but the objection was over-ruled.

Read
against
OLIVER.

An objection,
that the owner

of a moiety of *Calf Close* ought to have been a party, over-ruled.

The plaintiff's counsel objected to the legality of the *modus*, as insisted on by the defendants.

The legality of
the *moduses* ob-
jected

THE COURT declared, that the *moduses*, as insisted on by the defendants in their answers, are illegal, and ordered the defendants to account with the plaintiff for the tithes arising on their said lands and premises, as demanded by the bill; with costs to be taxed.

The *moduses* de-
clared illegal.

PYRKE against SORESBY.

TRIN. TERM,
18. GEO. 2.

Derbyshire, 21st June 1744.

THE vicar of *Heath*, otherwise *Lown*, in the county of *Derby*, claimed all tithes, both great and small, arising on divers farms and lands lying within the said parish, and particularly on *Oldcote's Farm*, of the value of one hundred and fifty pounds a-year, from *Michaelmas* 1734, until *Lady Day* 1741.

The occupier of
Oldcote's Farm,
in the parish of
Heath, in *Derby-
shire*, pays cer-
tain *moduses* to
the vicar in lieu
of the tithes
of new calved
cows, stropers,
milk, cheese,
and calves, and
2d. for every
colt and foal.

The defendant said, that *Oldcote's Farm* was free and exempted from the payment of tithe in kind of grass or clover mowed and made into hay; and that, in lieu of such tithe, there had been immemorially paid by the occupiers thereof, at *Michaelmas* in every year, or so soon after as demanded, an ancient *modus* of sevenpence for every acre of grass or clover which had been mowed or made into hay, and so in proportion for any greater or less quantity than an acre. The defendants also insisted, that tithes in kind were not due for milk, cheese, calves, foals, or colts; but that there had been immemorially paid to the vicar or his predecessors at *Michaelmas* yearly, or so soon after as demanded, by the owners of every new calved cow, barren cow, or stropser within the said parish, three halfpence, and no more, for every new calved cow, and one penny yearly, and no more, for every stropser or barren cow agisted in the said parish as a *modus* in lieu of all tithe milk and cheese, and of all calves kept, bred, or dropt in the said parish; and also for every colt or foal, twopence a-piece, as a *modus* as aforesaid.

The Court directed an issue to try the *modus* of sevenpence an acre in lieu of tithe hay.

THE COURT also ordered the defendant to account for the tithes of the agistment of all dry, barren, and unprofitable cattle kept, agisted, or depastured on *Oldcote's Farm*, from *Michaelmas* 1734, to *Lady Day* 1742; for the tithes of the wool and lambs,

PYBKE
against
SOMERBY.

from his sheep depastured on the said farm during the said time; for the several new calved cows and barren cows or stropers, which he had and kept, during the time aforesaid, on his said farm, according to the said several *modus*es of three halfpence, for every new calved cow, and one penny for every barren cow or stropper payable in lieu of the tithes of milk, cheese, and calves; for the several colts and foals which he had dropt on his said farm, during the time aforesaid, according to the said *modus* of twopence for each colt or foal; and also all other titheable matters and things demanded by the said bill, which the defendant had on the said farm during the said time.

The costs to be reserved till after the trial and report.

MICH. TERM,
18. GEO. 2.

SMITH against BAAS.
Suffolk, 22d November 1744.

The vicar of
Westhall, in *Suf-*
folk, claims all
tithes, excepting
corn and grain,

THE vicar of *Westhall*, in the county of *Suffolk*, claimed all manner of tithes, except of corn and grain, which had been usually paid to the impropiators, or their lessees.

The defendants
admit, that clo-
ver, turnips,
wool, pigs, poul-
try, fruits, and
vegetables, pay
tithes in kind.

The defendants acknowledged, that tithes in kind were due for clover seed, turnips, wool, pigs, geese, turkeys, chickens, eggs, honey, wax, apricots, and ducks, and twopence a head for *Easter* offerings, for every person living in the parish above sixteen years old; and they offered to pay the several sums of money particularly stated in their answer, for those tithes which were payable in kind. They denied, that they had any parsnips, carrots, flax, or hops, but acknowledged that tithes in kind are due for the same. But they denied, that any tithes in kind are due for wood, calves, lambs, hemp, milk, apples, pears, plumbs, nuts, agistment of barren and unprofitable cattle, clover and other hay; and insisted, that certain *modus*es are due and payable for the same, on *Lammas Day* yearly, in full satisfaction of all tithes due for the same, *viz.* for every cow milked in the parish, in full for the tithe milk thereof the yearly sum of twopence; for every barren, unfruitful, and unprofitable beast kept and depastured in the said parish, one penny, in lieu of all tithes of such beast; for every acre of *Hardland Meadow* threepence, and so in proportion for a greater or less quantity; for every acre of *Low Meadow*, fourpence, and so in proportion, in full satisfaction of all and singular the tithes of the hay and grass made into hay yearly growing and made on such *Hardland* and *Low Meadow*; for every peck of hempseed sown in the said parish, sixpence yearly, and so in proportion, in full of the tithes of such hemp growing there; for every lamb yearly, one penny, if under ten, but if ten, one lamb at *Lammas Day*; and for every

and insist on ad.
in lieu of every
milch cow;
1d. for every
dry cow;
3d. an acre for
Hardland Mea-
dow;
4d. an acre for
Low Meadow;
6d. a peck for
hemp seed;
1d. for every
lamb, under ten,
and one lamb in
ten on *Lammas*
Day;

every calf fallen, if under ten, four pence; if ten, one calf when every such calf is of the full age of five weeks; that every person who cutteth, loppeth, or felleth any wood in the said parish or titheable places thereof, pays to the vicar one hen, called an *hearth hen*, or sixpence in money in full discharge of the tithes of all such wood, and for the tithe of apples, plumbs, pears, and nuts, fourpence, in full of all tithes of such fruits.

6d. in lieu of firewood; 4d. for apples, plumbs, pears,

SMITH
against
BAAS.

4d. for every calf under ten. and one calf in ten when five weeks old; a hearth hen, or and nuts.

The plaintiff replied generally, save and except his demands of tithes, or some composition or customary payment in lieu thereof, for wood, calves, lambs, hemp, milk, apples, pears, plumbs, nuts, clover seed, turnips, wool, pigs, geese, turkeys, chickens, eggs, honey, wax, *Easter* offerings, oblations, obventions, apricots, and ducks, the defendants having by their answers offered and tendered several sums of money for their several respective tithes for the same, and save and except the plaintiff's demands for the tithes of parsnips, carrots, flax, and hops, for which the defendants acknowledged tithes in kind were due, but insisted there were none due from them during the time demanded by the bill; but insisted on all his other demands of tithes made in and by his bill; and the defendants rejoined; and having pursuant to an order, dated the fourth of *November* 1743, paid their tenders, in lieu of their tithes in kind for clover-seed, turnips, wool, pigs, geese, turkeys, chickens, eggs, honey, wax, and twopence an head for *Easter* offerings, apricots, and ducks with ten pounds costs; the issue was joined as to the other matters; and witnesses were examined on both sides; and now upon hearing counsel on both sides; and reading the depositions of *P. Pullen*; a copy of a judgment in the court of king's bench, in *Trinity Term* 1626, between *Francis Davy* and *W. Cockran*, and the verdict thereon; several depositions of witnesses on both sides; and several exhibits beginning in 1702, being herbage bills, and ending in 1738; which said bills were for tithes for the said years, and signed by the former vicars; and on reading the answer, and on full debate;

The plaintiff insists on tithes in kind for the articles for which *modus* are set up.

The defendants tender the value of the tithes in kind.

The evidence read.

THE COURT ordered the bill to be dismissed, as to the tithes for clover-seed, turnips, wool, pigs, geese, turkeys, chickens, eggs, honey, wax, *Easter* offerings, apricots, and ducks, without costs, tithes in kind being tendered for such matters, by the answer, with costs, and paid by the defendants pursuant to the said order.

The bill dismissed without costs, as to those tithes for which the defendant had tendered the value.

As to the demand of tithes in kind for wood, calves, lambs, hemp, milk, apples, pears, plumbs, and nuts, the said defendants having, by their answer, insisted upon several *modus* being due and payable for the said matters and things; and as to the tithes of parsnips, carrots, flax, and hops, the said defendants

The bill dismissed, as to the articles of which the defendants denied they had any, with costs to the time of the replication.

SMITH
against
BAAS.

having, by their answer, admitted tithes in kind to be due, but insisted, that they had no such matters and things, during the time demanded by the bill; and the said plaintiff having for the said reasons submitted thereto by his replication, the Court ordered the bill to be also dismissed, as to the aforesaid demands of tithes in kind for the same, with costs to the time of filing the said replication.

The *modus*, as to cows, hempseed, lambs, calves, firewood, apples, plumbs, pears, and nuts decreed; except gaff cows.

THE COURT further ordered the defendants to account for the several *modus*, set up by their answers, and submitted to by the plaintiff in his replication, but without costs, and also to account for their tithes in kind of all hay, arising on the new laid down lands within the parish; and also for the agistment of all barren and unprofitable cattle, (except gaff cows) and also for the said gaff cows according to the *modus* of one penny a-piece, with costs to this time.

The plaintiff refuses to try the *modus* as to the tithehay of *Hardland Meadow*, and *Low Meadow*.

As to the *modus* of threepence for every acre of *Hardland Meadow*, and fourpence for every acre of *Low Meadow*, in lieu of the tithes of the hay yearly arising on such *Hardland* and *Low Meadow*, the consideration thereof is adjudged over for the plaintiff to give his answer to the Court, whether he thinks proper to try at law the validity of the said two *modus*, and the plaintiff having considered thereof, and not chusing to try the same;

The *modus* of 3d. an acre and 4d. an acre for *Hardland* and *Low Meadow* established.

THE COURT ordered the bill to be dismissed, as to the demand of tithes in kind for the hay arising on the said *Hardland Meadow* and *Low Meadow*, with costs, and the defendants to account with the plaintiff, together with the other matters, for the tithes of hay arising on the said *Hardland* and *Low Meadow*, according to the said *modus*, without costs, as to the tithes of such hay.

The deputy made his report, dated the twenty-ninth of June last; and on the fifteenth of July 1745, the said report was confirmed, with subsequent costs.

T. PARKER.
J. REYNOLDS.
CHA. CLARKE.
E. CLIVE.

HILARY TERM
19. GEO. 2.

LAMBERT against SMITH.

Yorkshire, 20th February 1745.

The plaintiff, as proprietor of the township of the rectory of *Sandall Magna*, in *Yorkshire*, claims the tithe of hay, of depasturing barren cattle, and of clover seed.

THE bill stated, that the plaintiff *Hardecastle* was at *Candlemas* 1727, and had been ever since, owner and proprietor of that part of the impropriate rectory of *Sandall Magna*, which lies within the township of *Sandall Magna*, in the county of *York*; and that the plaintiffs, the *Lamberts*, by virtue of the lease made to them by him, had ever since the said feast been entitled

entitled to all the tithes, both great and small, arising on the lands lying within the said township; that the defendants from *Candlemas* 1738. had occupied land lying within the said township, from which they had yearly cut and mowed hay and clover, which they had carried away and converted to their own use, without setting out the tithes thereof in kind, or making the said plaintiff any recompence for the same; and that they had also yearly kept and depastured on their said lands dry, barren, and unprofitable cattle, the tithes for the depasturage and agistment of which they ought to have paid to the said plaintiffs. The bill therefore prayed, that they might be decreed to account with and satisfy the plaintiffs for the values of the said tithes.

The defendants, by their answers, said, that they did not know that *Hardcastle* either was or is seised in fee of the said rectory, and of the great and small tithes of the said township, or that he had made such lease to the other plaintiffs; but that they believed he was seised of divers lands in the township, and also of a portion of the tithes of corn and other tithes in the same; and that he had demised the said lands and tithes to the other plaintiffs; but they denied, that there had been immemorially paid to the rector of *Sandall Magna*, or to his lessees any tithes for hay, agistment of barren cattle or clover-seed arising in the said township; and insisted, that, time out of mind, the lands in the said township had been divided into several ancient farms, for each of which there had been immemorially paid at *Easter* yearly, to the vicar of the parish, several sums of money, as *modus*, in lieu of all tithe hay accruing or renewing within the said ancient farms respectively: and all the defendants (except the defendant *Zouch* the vicar) submitted to the Court, whether any tithes were payable in the township for the agistment of barren cattle, and if such were due, whether the same, and also the tithe of clover-seed ought to be paid to the rector or to the vicar of the parish, no such tithe having, within the memory of man, been paid to the plaintiffs, or to any rector of the parish.

The defendant *Zouch* said, that he had been for twenty-years past, and then was, vicar of the parish, and as such was entitled to the tithes of clover seed and agistment of barren cattle, and he denied, that tithes of clover-seed, or for agistment had ever been paid to the plaintiffs, or to any rector of the parish, or his lessee. The defendant also insisted, that, as vicar, he was entitled to all oblations, obventions, offerings, and mortuaries payable throughout the parish, and to all tithes in kind, for which no *modus*, or other compositions in lieu thereof, had been paid; but he admitted, that the plaintiffs had received the tithes of pigs, geese, and eggs, and a customary payment for carts, called *an hen*; and that the owners of the great tithes in *Crigglestone* had received the tithes of wool and lambs in *Sandall*

F f 3

Magna.

LAMBERT
against
SMITH.

The defendants admit that the plaintiff is seised of lands, and of a portion of the tithes of the township;

but insist, that there are certain *modus* payable to the vicar in lieu of the tithes demanded by the plaintiff.

The vicar insists, that he is entitled to the tithes of clover-seed, and depasturing cattle; and to all oblations, obventions and *Easter* offerings.

admits the plaintiff had received the tithes of pigs, geese, eggs, and carts;

LAMBERT
against
SMITH.

and produces the
Easter book as e-
vidence of the
tithes he is en-
titled to receive.

Magna. He also said, that there had been immemorially kept in the said parish, by the vicars there, a book called THE EASTER BOOK, wherein are entered the names of the householders of the parish, and that under the heads and titles following, TO WIT, *Ritus. Fen. Oblat. Vau. Nove Vauie. Gall. Apof. Pull. Qm.* are entered all such *modus*es and *Easter offerings*, as are due and claimed by the vicars from each householder; and he insisted, that the several sums mentioned in the said book are due and payable by every respective householder, and had for time immemorial been received and taken by him and his predecessors at *Easter* yearly, in discharge of the several titheable matters comprised under the said heads. He then set forth the several lands, as well such as were part of his *glebe*, as those that were not, which he had held and occupied in each and every of the said years, and also the several titheable matters which he had yearly on his said lands, and said that he had never paid any tithe hay in kind, or any thing for the herbage or agistment of his cattle on such parts of his said lands as were his *glebe*, apprehending that no such tithe was due or payable for the same.

The defendant
Smith says, that
the lands he
holds are part
of four ancient
farms, for which
certain *modus*es
are payable to
the vicar in lieu
of tithe hay.

The defendant *Smith* and others further said, that there had been for the ancient farms or tenements in the township of *Sandall Magna*, called *Grice's, Arthington's, Carter's, and Barker's*, the several *modus*es particularly mentioned in their answers yearly paid to and accepted by the vicar of the parish, in lieu of tithe hay arising on the said ancient farms; and they set forth the several lands by them occupied in the township yearly, and the several titheable matters and things which they had arising thereon, during the time demanded by by bill; and insisted, that for so much of the lands by them occupied, as were part of the said four ancient farms, no tithe hay in kind, or any satisfaction in lieu thereof, was payable to the plaintiff; but that the said several *modus*es had been immemorially paid to and accepted by the vicars in lieu of the tithe hay arising on the said four ancient farms.

Himsworth and
Scorall say, they
have no lands in
the township.

The defendants *W. Himsworth* and *R. Scorall* said, that they had not occupied any lands in the township during the time mentioned in the bill.

The evidence
read.

The plaintiffs replied to all the answers (except those of *Himsworth* and *Scorall*); and the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading, on behalf of the plaintiff, several depositions; and the defendant's counsel objecting to the reading of a deed, dated the eleventh of *September* in the fifteenth year of *Charles the First*, without an order to prove exhibits, or a note given thereof to the defendants; and *W. Campy*, being then

sworn

LAMBERT
against
SMITH.

sworn in court, produced a book, called *Thursby's Register Book*, by him taken and brought out of the consistory court of *York*; the cause was ordered to stand over; and, by consent, attested copies, taken from the said book, were to be read at the further hearing. The cause came on again on the twentieth of *February* 1745, and upon reading, for the plaintiffs, a demise of the rectory and tithes of *Sandall Magna*, for twenty-one years, from *Queen Elizabeth* to *T. Waterton*, dated the twenty-second of her reign, enrolled in the office of the treasurer's remembrancer in this court; an enrollment, in the said office, of a grant of the inheritance of the rectory and tithes from *Queen Elizabeth* to *G. Garth*; an indenture signed *R. Pilkington*, dated the sixteenth of *September*, in the fifteenth year of *Charles the First*; an indenture, signed *W. and E. Hardcastle*, dated the seventeenth of *July* 1686; an exemplification of a fine in *Trinity Term* in the third year of *James the Second*, between *T. Hardcastle* and others, plaintiffs, and *W. and E. Hardcastle* and others, defendants; a recovery in *Michaelmas Term*, in the sixth year of *George the First*, wherein *W. Gray*, is demandant, *T. Wood*, tenant, and *T. Hardcastle*, vouchee; an order made herein, on the tenth instant, and an extract or a copy of an instrument, dated the thirteenth of *March* 1356, from the said register book of *J. Thursby*, formerly archbishop of *York*; copies of two other extracts from the said book, dated the twenty-seventh of *March* 1357; several depositions on the behalf of the defendants; a terrier in the parish register of *Sandall Magna*, dated 1684; three *Easter* books belonging to the vicars of the said parish; an exemplification of a decree, made the twelfth of *February*, in the thirty-sixth year of *Charles the Second*, between *J. Wood*, the then vicar of the parish, plaintiff, and dame *M. Beaumont*, widow, and others inhabitants, owners, and occupiers of lands in *Crigglestone* township, within the said parish of *Sandall Magna*, defendants (a), and upon full debate;

THE COURT ordered the bill, as to *Himsworth* and *Scorall*, to be dismissed, with forty shillings costs; to be dismissed, but without costs and without prejudice, as to the plaintiff's demands of the tithe of clover-feed, agistment of barren cattle, and tithe hay arising on the lands said to be part of the four ancient farms, called *Grice's*, *Arthington's*, *Carter's*, and *Barker's* farms, or any or either of them, and also on the glebe lands, in the possession of the defendant *Zouch*, the vicar of the parish; and that the defendants shall severally account with the plaintiffs for the values of the tithe hay yearly arising or renewing on the other lands, by them occupied in the said township of *Sandall Magna*, (which are no part of the glebe lands, or of the said four ancient farms) but without costs: Further directions to be reserved till after report.

The bill, as to *Himsworth* and *Scorall*, dismissed, dismissed without prejudice as to clover-feed and agistment;

and as to the tithe hay of lands part of the four ancient farms. The tithe hay or other lands in the township of *Sandall Magna* decreed.

(a) See vol. i. p. 216.

EASTER TERM,
22. GEO. 2.

LAMBERT *against* ZOUCH.

Yorkshire, 24th April 1749.

The proprietor of that part of the rectory of *Sandall Magna*, in *Yorkshire*, which lies within the township of *Sandall Magna*, claims from the vicar the tithes of turnips, potatoes, rape, woad, weed, cole, and clover seed, and depasturing of barren cattle.

THE bill stated, that about the year 1357, the vicarage of *Sandall Magna*, in the county of *Yrk*, was created, and endowed with a messuage and a croft, with the appurtenances, and twenty marks for the year, payable out of the impropriate rectory of *Sandall Magna*, and with no other tithes or oblations whatsoever; that the impropriators of the said rectory, or of such part thereof as lies within the township of *Sandall Magna*, are entitled to the tithes of rape, woad, weed, coleseed, turnips, potatoes, clover-seed, herbage, the agistment of dry, barren, and unprofitable cattle, and all other tithes arising within that part of the rectory which lies within the township of *Sandall Magna*, or the titheable places thereof; that the plaintiff *Hardcastle* then was, and from *Candlemas* 1738, had been impropriator of that part of the rectory, which lies in the township of *Sandall Magna*; that the same, during all that time, had been in the possession of the other plaintiffs, as his tenants; that the said plaintiffs, or some of them, are entitled to not only the great tithes, but the tithes before mentioned, and to all other the tithes, both great and small, arising in the said township, or the titheable places thereof, except the messuage and glebe land belonging to the defendant, and also except as in the said bill is mentioned; that the defendant had, during the time aforesaid, in each year, held and occupied divers lands and grounds, lying within the township of *Sandall Magna*, or the titheable places thereof, besides the glebe lands belonging to the vicarage, some of which were formerly enclosed from the commons lying within the township, and on which lands and grounds he had arising yearly, rape, woad, weed, cole-seed, turnips, potatoes, and several other titheable matters and things, which he had carried away without setting out the tithes thereof, or making the plaintiffs any satisfaction for the same; that he had likewise fed and agisted on the said lands yearly several dry, barren, and unprofitable cattle, the tithes for the agistment of which ought to have been paid to the plaintiffs, but that he had refused to account for the same. The bill therefore prayed an account and satisfaction for the values of his tithes.

The defendant denies the plaintiff's right to the tithes demanded, and insists, that he, as vicar of the parish, is entitled to them.

The defendant said, that he believed, that the vicarage of *Sandall Magna* was, about the time in the bill mentioned, endowed; and that he had in his custody a copy of the appropriation of the parish church of *Sandall Magna*, to the chapel of *St. Stephen's, Westminster*, dated the thirteenth of *March* 1656, and also a writing which he believed might be a copy of an endowment of the vicarage, dated the twenty seventh of *March*

March 1357, and which he set forth *verbatim* in his answer; but whether the same was the original he knew not, for that he and his predecessors vicars thereof had ever since the foundation of the said vicarage, received all oblations, obventions, offerings, and mortuaries, payable throughout the said parish, and also all such small tithes in kind, as have yearly arisen within the township of *Sandall Magna*, for which no *modus*, or other composition in lieu thereof, had been paid to him and his predecessors, vicars there, and save likewise what have been paid to the impropiators of the said parish, as mentioned in his answer. He said, that he believed, that, time out of mind, all the lands in the said parish (except as therein excepted) had been divided into several ancient farms, and that for each farm there had been paid at *Easter* yearly, to the vicars of the said parish, certain *moduses*, in lieu of tithe hay, herbage, and agistment; that ever since he had been vicar there, he had received, and insisted he ought to receive, yearly, the sums in his answer mentioned, for the several estates therein particularly set forth. He also insisted, that ever since he became vicar there, he had received, and ought to receive the tithes of turnips and potatoes throughout the said parish. The defendant further said, that he had never known the tithe of clover-seed paid in the said parish; and he insisted, that the tithes of clover-seed, rape-seed, weld, turnips, cole-seed, potatoes, herbage, and agistment of dry, barren, and unprofitable cattle are *small tithes*, and belonged to him as vicar of *Sandall Magna*.

LAMBERT
against
ZOUCH.

The plaintiffs replied, and thereby waived their demand of the tithes of turnips and potatoes; and the defendant rejoined; but no witnesses were examined on either side; the proofs taken in the other cause being read, by order dated the nineteenth instant;

The plaintiff
waives his de-
mand as to tur-
nips and pota-
toes.

THE COURT ordered the bill, as to the demand of tithes of turnips and potatoes, to be dismissed with costs, to the time of the replication; and the defendants to account with the plaintiffs for the values of the tithes of the rape, woad, weld, cole-seed, and clover-seed arising or renewing on the lands and grounds occupied by the said defendant (save and except his said glebe) within that part of the said rectory, which lies within the township of *Sandall Magna*, during the time demanded by the bill; and likewise for the value of the tithes of the depasturage and agistment of the dry, barren, and unprofitable cattle fed and depastured on the said defendant's lands, during the said time, together with the plaintiff's costs: further directions to be reserved till after report.

The bill as to
turnips and po-
tatoes dismissed,
and the tithes of
the other arti-
cles, excepting
those arising on
the glebe lands,
decreed.

TRIN. TERM, ALMOND *against* TRINITY COLLEGE, CAMBRIDGE.
21. GEO. 2.

Yorkshire, 2d July 1747.

The vicar of *Kellington*, in *Yorkshire*, is entitled to the tithes of the agistment of barren and unprofitable cattle.

See another cause, Trinity Term, 17. Geo. 3.

THE vicar of *Kellington*, in the county of *York*, stated, that, for time immemorial, the vicars thereof had been, by virtue of some ancient endowment or laudable custom, entitled to all small tithes, oblations, obventions, and other ecclesiastical dues arising therein; that he, for nine years past, had been, and then was vicar thereof; that the defendants *R. and W. Bellwood* had been occupiers of divers lands within the parish, and had agisted and depastured barren and unprofitable cattle upon their grounds, the tithes whereof ought to have been paid to him in kind, or some reasonable satisfaction made to him for the same. The bill therefore prayed, that the *Bellwoods* might discover the sorts and numbers of unprofitable cattle they had depastured annually during the said nine years, and account for the tithes thereof; that the defendants *Sleyworth, Leving, and Bateman*, might set forth why they encourage the *Bellwoods* to withhold such tithes, and that the *College* might produce their surveys at the hearing.

The master and fellows, by their answers, said, that they believed that the plaintiff, as vicar, was entitled to the small tithes, and other ecclesiastical dues, arising within the parish; that they now are, and for many years past had been, by virtue of a grant from *Henry the Eighth*, impropiators of the rectory of *Kellington*, and seised in their *demesne as of fee*, in right of their college, of the said rectory; that being so seised, they, by indenture dated the sixth of *May 1740*, demised the same to the defendants *Cheyworth* and *Leving*, to hold, &c. for twenty years; but whether they had demised the same to the defendant *Bateman*, or whether the said lessees or *Bateman*, by virtue of the leases are entitled to any tithes for barren and unprofitable cattle depastured therein, or whether the plaintiff, as vicar thereof, is entitled to the said tithes, they knew not. They further said, that they had in their custody several surveys of the estates belonging to the college, particularly the two surveys in 1563 and 1589; and also two other surveys of *Kellington* taken in 1607 and 1630, which the plaintiff might peruse, and take copies of or extracts from.

The defendants *Cheyworth* and *Leving* admitted, that the plaintiff, as vicar of the parish, was entitled to all small tithes, oblations, obventions, and other ecclesiastical duties arising therein, except the tithes of agistment of dry, barren, and unprofitable cattle; for that such tithes of agistment are due only to the impropriate rector of the said parish, and had been time immemorially taken and received by the impropriate rectors of the said parish, or their lessees or farmers. They further said, that the master,

master, fellows, and scholars, for many years, had been impropriate rectors of *Kellington*; and that they, being so seised in fee thereof, did, by indenture dated the sixth of *May* 1740, demise the said rectory to them, with all tithes thereto belonging, to hold for twenty years; and that they afterwards, by indenture dated the fifteenth of *July* 1742, demised the same to the defendant *Bateman* for seven years, at one hundred and ninety pounds a-year. They denied that they knew or believed that the tithe of agistment of barren and unprofitable cattle is due to the plaintiff as vicar; but insisted, that such tithes had always been paid, except as aforesaid, to the impropriators of the rectory, or to their lessees or farmers; and that, by virtue of their lease, they had a good right thereto.

ALMOND
against
TRINITY
COLLEGE,
CAMBRIDGE.

The defendant *Bateman*, as under lessee, put in the like answer, and admitted that he had received some satisfaction of the other defendants for their tithe herbage since he became tenant of the said rectory.

The defendants *Bellwoods* set forth the farms they occupied in the parish, and the values and quantities of their tithes; but said, that they never had known the tithe of agistment of dry, barren, and unprofitable cattle paid to the vicar, but that it was constantly paid to the impropriators or their farmers, and was never claimed by any vicar till lately.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading a book of surveys produced by the College in the year 1563, of the fifth year of *Queen Elizabeth*, folio 71. 78, 79; another book of surveys in 1589, of the thirty-first year of *Queen Elizabeth*; several depositions; a record of the first fruits office; and a lease, dated the sixth of *May* 1740, from *Trinity College* to the defendants *Mary Leving* and *Anne Cheyworth*; and several other depositions;

THE COURT declared, that the plaintiff, as vicar of the vicarage of *Kellington* aforesaid, is well entitled to the tithe of agistment of barren and unprofitable cattle depastured within the said parish during the time stated in the bill; and therefore ordered the defendant *Bateman*, the under-lessee, to account with, satisfy, and pay to the plaintiff the tithe of agistment of barren and unprofitable cattle so depastured in the said parish, which he had received from the *Bellwoods*; and that the *Bellwoods* do account with, satisfy, and pay to the plaintiff the remainder of the tithe of agistment during the time demanded by bill, with costs taxed; the defendants, the college, to have their costs taxed; and further directions to be reserved till after the report.

HILTON

TRIN. TERM,
21. GEO. 2.

HYLTON *against* DAVIS.

Wiltshire, 15th July 1747.

The lay impro-
priators of *Lyne-*
ham, in *Wiltshire*,
claim the tithes,
both great and
small, of the
villages of *Lyne-*
ham, *Bradstock*,
Clack, and else-
where in the pa-
rish.

THE bill stated, that the plaintiffs, for seven years past, had been seised and possessed of the parsonage impropriate rectory of *Lyneham*, in the county of *Wilt*, and of all tithes of corn, grain, hay, and other tithes renewing within the villages of *Lyneham*, *Bradstock*, and *Clack*, and the houses and lands thereunto belonging, and elsewhere in the said parish of *Lyneham*, and as such were entitled to and ought to receive and take, as impropriators thereof, all tithes, both great and small, arising therein; that the plaintiffs *T. Hylton* and *Hannah* his wife were, in right of his said wife, entitled to one undivided third; the plaintiffs *D. Warwick* and *Elizabeth* his wife, in right of his said wife, to another undivided third; and the plaintiff *Robert Fransham* to the remaining undivided third part thereof; that the defendants, for several years past, had occupied divers lands lying therein, and had growing thereon several titheable matters, which they had carried away and converted to their own use, without setting out the tithes thereof, or making the plaintiffs any satisfaction for the same. The bill therefore prayed, that they might set forth the quantities, qualities, and values of their several titheable matters, and account for the values of the same.

The defendant *Davis* admits, that he holds two farms; that one of them is subject to tithes, which he had paid; but insists that the other, called *Tokenham Court Farm*, is tithe free.

The defendant *Davis* said, that for any thing he knew to the contrary the plaintiffs might be seised as stated in the bill; that he had occupied two farms in the parish, and had growing thereon several titheable matters, which he had carried off from the same, but could not set forth the quantities and values of the tithes thereof, for that one of his farms, called *Tokenham Court Farm* is not liable to the payment of tithes, and therefore he had not kept any account of the same; that his other farm is subject to the payment of tithes; and that he had contracted with the plaintiff *Hylton* to pay twelve shillings as a composition for the same the last year.

The defendant *Ferris* admits, that he depastured *Cow Leaze* and *Horse Leaze*, and sowed *Lower Long Furlong* with pease and turnips; but insists, that within the Branch of the parish in which his lands lie there is a *modus* of 10d. a-year for every cow, and 2d. a month for every sheep fed in that Branch, in lieu of all small tithes whatever.

The defendant *Ferris* spoke to the same effect as to the plaintiff's title; and said, that he had, for several years, occupied several farms lying within the branch of the rectory; that he had fed several cattle on *Home Cows Leaze* and on *Horse Leaze* being pasture; that he had sowed *Lower Long Furlong* with turnips and pease: and he set forth his other lands, and all the titheable matters he had had on his said lands. He also said, that he had always paid his great tithes, or some yearly payment in lieu thereof, pursuant to an agreement from time to time made between him and the plaintiffs, or their agents; and insisted, that there is a *modus* payable by the inhabitants of

Lyneham

Lyneham who occupy any lands lying within that branch of the rectory claimed by the plaintiffs, of tenpence a head for every cow beast yearly, and a farthing a month for every sheep, so long as they remain in any grounds within the said branch of the rectory or the titheable places thereof, in lieu of all small tithes whatsoever arising or renewing within the parish or the titheable places thereof belonging to or claimed by the plaintiffs; and that he had constantly paid the same till 1738 inclusive, to *Mary Walker*, and to the plaintiffs since her death, in lieu of all small tithes: and he now tendered the same to the plaintiff.

HYLTON
against
DAVIS.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; reading the answers; several receipts; the depositions; an agreement dated the twentieth of *June* 1709; an account of tithes paid for three years; two deeds, dated the tenth of *April* 1680 and the twenty-fourth of *March* 1698; articles of agreement, dated the twenty-fourth of *July* 1708; the original will and codicil of *Mary Walker*, dated respectively the twenty-first of *August* 1729 and the third of *August* 1730; a copy of a decree in chancery, dated the ninth of *June* 1741, in a cause between *D. Warwick and Others* against *T. Hylton and his Wife* and upon full debate of the matter;

The evidence read.

THE COURT ordered the defendants to account for the values of the tithes in kind of all the titheable matters demanded by the bill, with costs to this time; further directions and subsequent costs being reserved till after the report.

The tithes decreed in kind;

But by an order, dated the twelfth day of *February* 1750, on the application of *M. Davis*, widow and executrix of *W. Davis*, deceased, it was, for the reasons therein mentioned, ordered, that the said *Mary Davis* should be at liberty to exhibit a bill of review to review the said decree, dated the fifteenth of *July* 1747.

but the defendant *Davis* dying, and his widow having discovered new evidence, obtains leave to file a bill of review,

She accordingly filed her bill of review against the impropiators, stating the substance of the bill, answer, and decree, and that soon after the making of the said decree, on the fifteenth of *December* following, the defendant *W. Davis* died, having made his will, and appointed the said *Mary* his wife sole executrix; that in *Hilary Term* 1748 the said cause was revived against her; but that the account directed by the said decree with respect to the said *W. Davis* was not then yet taken; and she insisted, by her bill of review, that she, as executrix of *W. Davis*, ought not to be bound by the decree, or to account with the impropiators for the tithes arising on *Tokenham Court Farm* and *Self Mead*; for that since the decree was pronounced, and since the death of *W. Davis*, she had discovered, that the prior of the monastery of the *Blessed Virgin Mary*, of *Bradenstock*, in the same

stating, that *Tokenham Court Farm* and *Self Mead* were tithe free,

for that the monastery of *Bradenstock* was seized in fee of the rectory of *Lyneham*; and of all the tithes thereto belonging;

in fee of the rectory of *Lyneham*; and of all the tithes thereto belonging;

county,

HVLVON
against
DAVIS.

that the said
Farm and Mead
are within the
said rectory ;

that the said
monastery and
rectory were
surrendered into
the hands of
Henry the Eighth,
who granted all
the tithes there-
of to *Sir H. Long*,

who conveyed
to *Sir W. Button*
the tithes of *Tokenham* ;

that *Sir W. Button*
granted the same
to *Noyes* ;

that the same
came to *J. Walker*, who con-
veyed to *W. Davis*.

county, and the convent of the same place, were heretofore seised in fee of the rectory of *Lyneham*, and of all tithes, great and small, yearly renewing within the parish of *Lyneham*, and the titheable places thereof ; that *Tokenham Court Farm* and *Self Mead* were within the said rectory and parish ; that the prior and convent did, in the thirtieth year of *Henry the Eighth*, surrender into the hands of the said king, his heirs and assigns, all the said monastery of *Bradenstock*, and amongst other things all the rectories, tithes, oblations, and all profits, &c. whatsoever, to the said monastery belonging ; that the said king did in the thirty-third year of his reign, by his letters patent, for the considerations therein mentioned, grant all the tithes of the rectory of *Lyneham* unto *Sir H. Long, Knight*, in fee ; and that *E. Long*, a descendant of his, did, in the first year of the reign of *Charles the First*, grant and convey to *Sir W. Button* all and all manner of tithes of corn, grain, hay, wood, wool, lamb, hemp, flax, and all other tithes whatsoever, renewing yearly out of all that the manor, hamlet, or place, called *Tokenham*, otherwise *West Tokenham*, within the parish of *Lyneham*, to hold, &c. ; and by indentures of lease and release, dated the fifth and sixth of *May* 1679, made between *Sir J. Button, &c.* did grant and release to *Noyes* and *Wall*, and their heirs, all those the manors or lordships of *Tokenham*, otherwise *West Tokenham*, *Lyneham*, and *Preston*, and the tithes of corn, &c. yearly arising out of the said manor of *Tokenham* ; that the same, by several deeds and mesne conveyances, came to *John Walker*, who leased (he being so seised), on the twentieth of *September* 1743, the said *Tokenham Court Farm*, and the tithes thereof, to *William Davis*, at the yearly rent of two hundred and seventy-four pounds for twelve years, in which farm *Self Mead Close* was included : and she insisted, that neither she or *W. Davis* had ever paid, or was liable to pay any tithes, nor any thing in lieu thereof, to the said impropriators, for or in respect of *Tokenham Court Farm* or *Self Mead*, in regard they did lie in the parish of *Lyneham*, and formerly belonged to the monastery of *Bradenstock*, and were surrendered by the said prior and convent to *Henry the Eighth*, and which came to the said *John Walker*, who leased the same as aforesaid. She also insisted, that as the said *W. Davis* did not know, or was acquainted with the title of the said *J. Walker* to the said tithes at the time of the hearing of the cause, she having received such information and discovery since the pronouncing of the said decree, she was not bound to pay the tithes so decreed as aforesaid for *Tokenham Court Farm* and *Self Mead*, or to account with the impropriators for the same. The bill therefore prayed, that the said decree, so far as the same affected the said *W. Davis* and the said plaintiff as his executrix, with respect to the tithes of *Tokenham Court Farm* and *Self Mead* might be reviewed and reversed

The

The defendants *Hylton* and *Fransham*, by their answer, admitted the facts touching the decree and the death of *W. Davis, &c.* but said, that they knew nothing of the surrender, grant, and conveyances as in the bill is stated; and insisted, that the tithes of *Tokenham Court Farm* and *Self Mead* were due to them, and that they were not exempt from the payment of tithes. The answer also stated, that *Fransham* and *Warwick* did, by deed dated the seventeenth of *January 1743*, empower the defendant *Hylton* to receive to his own use all their shares of the arrears of the tithes then due, and which were demanded by the original bill; and that he was thereby solely entitled to receive to his own use the said arrears.

HYLTON
against
DAVIS.

The impropriators insist, that they are not tithe free.

Upon hearing counsel for all parties, on the tenth of *December 1753*; and reading an order, dated the twenty-first of *April 1752*, for reading the depositions which had been thentofore taken in a cause of *Walker v. Hylton (a)*, saving just exceptions; and also another order to prove exhibits; and on reading the decree, dated the fifteenth of *July 1747*, in the cause of *Hylton v. Davis*; a copy of a surrender of the monastery of *Bradenstock* by the prior and convent thereof to *Henry the Eighth*, dated the eighteenth of *January*, in the thirtieth year of his reign; a copy of the record from the augmentation office of the ministers accounts of the possessions of the monastery for the year ending at *Michaelmas*, in the thirty-fourth year of his reign, wherein it was recited, that the said ministers did not account for any profits arising from the issues, profits, and revenues of the said rectory of *Lyneham*, with its members and appurtenances, lately belonging to the monastery of *Bradenstock*, in the said thirty-fourth year; for that the said king of his special grace (as well in consideration of the good, true, and faithful service which his beloved servant

The cause heard.

The evidence read.

(a) This was an original bill filed by *John Walker* against *Hilton*, the impropriator, and his wife, to establish his right and title to the tithes of *Tokenham Court Farm* and *Self Mead*, and to quiet his possession thereof by a perpetual injunction. The bill stated the surrender, the grant, and the intermediate conveyances of the monastery of *Bradenstock*, as in the above cause; that about *May 1731* the plaintiff had entered upon and enjoyed the premises and the tithes thereof, and particularly the tithes of *Tokenham Court Farm* and *Self Mead*; that no tithes whatsoever had ever been demanded from him or his lessees, or from any preceding owners or lessees, in respect of any of the lands or tenements in the parish of *Lyneham* comprised in the settlement, and enjoyed by him. The defendant, as impropriator, insisted, that he was entitled to the tithes of all the places in the parish, particularly to those of *Tokenham Court Farm* and *Self*

Mead. But THE COURT, on reading the same evidence as was given in the above cause of *Davis v. Hilton*, and on full debate, DECREED, "that the right and title of the said plaintiff *John Walker* to all and singular the tithes, great and small, yearly arising, renewing, or increasing within the manor, hamlet, or place, called *Tokenham*, otherwise *West Tokenham*, within the parish of *Lyneham*, in the county of *Wilts*, be established and confirmed as against the defendant *Thomas Hilton*, his heirs and assigns, and against all persons claiming or to claim by, from, or under him or them, or any of them, with taxed costs:" and the Court declared, "that the close in the pleadings mentioned, called *Self Mead*, doth lie within the said manor, hamlet, or place, called *Tokenham*, otherwise *West Tokenham*, aforesaid."

Sir

HYLTON
against
DAVIS.

Sir Henry Long, Knight, theretofore did for the said king, as for a certain sum of money by the said *Sir Henry* paid into the hands of the treasurer of the court of augmentations of the revenues of the crown to the use of the said king), by his letters patent under his great seal of *England*, on the sixteenth of *February*, in the thirty-third year of his reign, amongst other things, gave and granted to the said *Sir H. Long* the whole rectory of *Lyneham*, with its members and appurtenances, in the county of *Wilts*, lately belonging to the said monastery, and all and all manner of tithes of sheaf corn, grain, and hay, coming, &c. out of all lands, meadows, and pastures, as well within the parish of *Lyneham* as out of the demesne lands of the manor of *Lyneham*, which lately were in the hands, culture, and occupation of the late prior of the said monastery before and at the time of the dissolution of the said monastery to have and to hold the said rectory and tithes to the said *Sir H. Long*, his heirs and assigns for ever; and *L. Moxham* deposing in court, that he had searched at the chapel of the rolls from the sixteenth of *February*, in the thirty-third year of *Henry the Eighth*, being the date of the letters patent for the inrollment of the said letters patent, and also in the office of the lord treasurer's remembrancer of this court, but could not find the same in either office; and on reading an *inspeximus*, dated the tenth of *February*, in the twenty-second year of *Queen Elizabeth*; as well as two several ministers accounts of the possessions of the said monastery, of the thirty-first and thirty second years of *Henry the Eighth*; as of a certain particular whereon letters patent issued to the said *Sir H. Long*, in the thirty-third year of the said king; a copy of an inquisition from the rolls, taken after the death of *Sir H. Long*, the ninth of *December*, in the third and fourth years of *Philip and Mary*; a commission for taking the same; and another inquisition after the death of *R. Long*, son of *Sir Henry*, dated the twenty-fifth of *February*, in the first year of *Queen Elizabeth*; the commission; several indentures; other proofs in the cause; and on debate of the matter;

*Tokenham Court
Farm and Self
Mead decreed to
be tithe free.*

THE COURT ordered the decretal order of the fifteenth day of *July 1747*, so far as the same relates to the demand of tithes from *W. Davis* on the farm called *Tokenham Court Farm*, and the mead called *Self Mead*, to be reversed; the bill of complaint touching the said matters to be dismissed without costs; the defendant *Fransham* to be dismissed on the bill of review without costs; and the defendant *Hylton* to pay to the plaintiff the costs of the bill of review, to be taxed.

PAKKE, Chief Baron.
B. LEGGE.
B. SMYTHE.
B. ADAMS.

CHAPMAN

CHAPMAN *against* SPENCER.EASTER TERM
21. GEO. 2.*Northamptonshire, 5th May 1748.*

THE rector of *Braybrooke*, in the county of *Northampton*, claimed all the tithes arising therein, and particularly the tithes of hay, which he stated the defendants had refused to pay, on a pretence that he enjoyed certain lands in lieu thereof, called *the Dole*; and relied upon the cause in this court of *Rudge v. Chapman (a)*.

The rector of *Braybrooke*, in *Northamptonshire*, claims the tithes of hay.

The defendants insisted, that there was and is a custom in the parish, that the rectors of *Braybrook* immemorially have been entitled to, and had received and enjoyed, and ought to receive and enjoy, the first crop of hay of a piece of ground, called *the Tithe Dole*, lying in *Mill Field*, in the said parish, in lieu of all the tithe hay annually arising in *the Open Fields* of the parish; that immemorially the said first crop had been mowed, and made into hay, by the occupiers of the farms called *Spencer's*, *Cliffham's*, and *Whitterings*, or some of them, now in the tenures of *Ed. Spence, &c.* or by some other persons employed by them, or some other farmers or parishioners of *Braybrooke*, and at their expence, for which the rectors of *Braybrooke* for the time being paid one shilling to the farmers; that the said farmers have used, time out of mind, to give notice to the rector for the time being when the said crop was made into hay; that the rector usually thereupon fetched away the same at his own expence; that every third year, when the *Mill Field* lay fallow, it had been the custom immemorially for the parishioners of the said parish, at their own expence, to fence the said piece of ground, called *the Tithe Dole*, from the rest of *the Mill Field*, to prevent the sheep and cattle from trespassing upon the same when the rector refused to accept of other ground, or money in lieu thereof; that the said *Tithe Dole* contained one rood and a half, and was always meadow, and lay in *Mill Field*, between *Smith's Meadow* and *Upper Meadow*; that every third year *Mill Field* lies fallow, and is depastured with sheep; that there is always some meadow therein, and which is commonly fenced to keep the sheep from trespassing and eating the grass growing on the said meadow ground, some part whereof is lying on a furlong, called *Dediron Furlong*, amongst which said meadow or mowing ground *the Tithe Dole* doth lie; that it has been usual for the owners of the meadow lying in *Mill Field*, when it is fallow (with the parson's consent), to exchange such meadow, or part thereof, for *the Tithe Dole*, to save the expence and trouble of fencing out *the Tithe Dole* from the other parts of the fields in which the sheep are depastured, so that the sheep might not

The defendants say, that the rector enjoys the first crop of a piece of ground lying in *the Mill Field*, and called *the Tithe Dole*, in lieu of the tithe hay of *the Open Fields*; that the farmers of *the Open Fields* make the first crop of *the Tithe Dole* into hay for the rector at their own expence, the rector paying to them only 1s. for the same; that when it is so made, they are to give the rector notice to fetch it away; that the *Mill Field* lies fallow every third year; that the farmers, at their own expence, repair the fences of *the Tithe Dole* when the rector refuses other land in lieu thereof; that *the Dole* lies between *Smith's Meadow* and *Upper Meadow*; that *the Tithe Dole* is frequently exchanged for other meadow;

(a) See this case, ante, page 407.

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that the rector
frequently lets
the Tithe Dole for
10s. a-year ;

that *the Tithe
Dole* lies open
when the crop
is off.

The defendants
further say, that
they had several
cottage commons,
for the tithes of
which there is a
modus of 8l. a-
year ;

and insist, *the
Tithe Dole* is en-
joyed in lieu of
the tithe hay of
the Open Fields ;

and that no tithe
hay is due in
kind for *Upper
Meadow* or
*Smith's Mea-
dow*.

The evidence
read.

trespass thereon ; that if the rector did not think fit to consent to such exchange, or refused to accept of the money in lieu thereof (which was and is entirely at his election), then *the Tithe Dole*, at the expence and by the direction of the parishioners, was singly fenced out from the said other pieces of meadow amongst which *the Tithe Dole* lay ; that the same has been so done by the landholders for eight or nine years past ; that the grass growing on *the Tithe Dole* was usually cut and made into hay by some of the farmers of the parish, or some other person employed by them at the same time ; that the other *Doles* or grass grounds were mowed ; and that when it was ready to be carried away, they gave notice thereof to the plaintiff to fetch it away, which he did for several years ; that the plaintiff let *the Tithe Dole* for several turns, when *the Mill Field* lay fallow, at ten shillings a-year, to the shepherds of *Braybrooke*, when he refused to change it for another piece of ground, which the farmers consented to sooner than to be at the expence of fencing it off ; and that after the crop is carried away by the plaintiff from *the Tithe Dole*, the same lies open and common as the other pieces of meadow do in *Mill Field*.

The defendants *Johnson* and others said, that they held several *Cottage Commons* in the parish, on which they did and had a right to depasture cows and sheep ; that they never had paid tithes for the same ; but that eight pounds *per annum* had been paid to and accepted by the rectors there for the tithes of such *cottage commons* ; and that tithe in kind had never been demanded for the same till last year.

All the defendants denied that they ever pretended that the rector was not entitled to any tithe hay in kind, or satisfaction for the same, except from *the Tithe Dole* of the meadow ground, or that for time immemorially *the Tithe Dole* had been held by the rectors of the said parish in lieu of all the tithe hay arising in the said parish, or any tithe hay in kind, otherwise than as aforesaid ; but insisted, that the first crop of hay of *the Tithe Dole* is, and always was enjoyed in such manner as aforesaid by the rector, in lieu of all the tithe hay annually arising as aforesaid on the said *open fields* ; and when they laid fallow, the rectors have, or might have had, the hay thereof, or some satisfaction for the same ; and they denied that the plaintiff was entitled to the tithe hay in kind arising from *the Upper Meadow* and *Smith's Meadow*, or that *the Tithe Dole* ought to be considered as a payment in kind for the tithe hay arising within the said two meadows.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel for all parties ; and on reading a copy of a bill filed in this court in *Michaelmas Term*, in the eleventh year of the reign of his present majesty,

majesty, *Rudge* against the present plaintiff; a copy of the decree made in the same cause, dated the fifteenth of *June* 1741; the exemplification of another decree made in the said cause the eighth of *November* 1742; the defendants answers; an order dated the twenty-fourth of *February* 1746 to prove exhibits *viva voce* at the hearing, viz. a copy of an inquisition taken in the fifteenth year of *Edward the Third*, relating to the profits of the said rectory of *Braybrooke*; and a copy of the first fruit roll concerning the yearly values of the said rectory and tithes then let to *Sir T. Griffin*; also on reading an office copy of a bill in this court in *Easter Term*, in the sixteenth year of *Charles the First*, by *N. Bent*, then rector of the said parish of *Braybrooke*, against *J. Connyers*, whose answer being offered to be read, but being objected to by the defendant's counsel, was by the Court denied to be read; an order made herein the twentieth of *May* last, for reading the depositions taken in the other causes, &c.; the depositions of several witnesses taken in this cause; the defendant's answer; a decree made in the court of chancery in *Michaelmas Term* 1652, *Griffin v. Spence*; and it being admitted in court, by the defendant's counsel, that the family of the *Griffins* had been patrons of the said rectory from the time of *King Henry the Eighth* to the year 1700; and also on reading the copy of an entry in the registry of the *Bishop of Peterborough*, dated the twenty-second of *April* 1685, of the institution of *S. Harves* to the said rectory; a copy of another entry from the said registry of the institution of *S. Stiles* to the said rectory, dated the twenty-ninth of *July* 1689; and upon reading for the defendants the depositions of *W. Coultman* taken on his cross-examination on their part; also his depositions in the cause of *Chapman v. Spence*; several depositions of *R. Marshall* and *J. Hopkins* in the cause of *Rudge v. Chapman*, and of several other witnesses; and on the deposition of *J. Crick* the elder, taken in this cause on the part of the defendants, being offered to be read, and objected to by the plaintiff's counsel, and refused by the court; and reading his deposition taken on his cross-examination; as also the depositions of several other witnesses;

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An answer not
permitted to be
read in evidence.

THE COURT, upon full debate of the matter for several days, ordered the defendants to account for the values of their tithe hay arising on the particular lands demanded by the bill; and of the several other titheable matters and things demanded by the said bill, which they severally had arising or renewing on the lands and grounds by them respectively occupied in the said parish of *Braybrooke* and the titheable places thereof yearly and every year during the said time in the bill charged; the defendants to pay the plaintiff his costs of suit to this time, to be taxed,

The tithes de-
creed to be paid
in kind.

TAIN, TERM,
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MACGILL *against* LE STRANGE.

Norfolk, 20th June 1748.

The rector of
Ringstead, in
Norfolk, is enti-
tled to all tithes,
both great and
small, arising
within the de-
populated dis-
trict, called
Little Ring-
stead.

THE bill stated, that Sir N. Le Strange and his ancestors had, for many years past, been seised of all the lands in the parish of *Ringstead Parva*, otherwise *Barrett Ringstead*, otherwise *Ringstead Saint Andrew*, in the county of Norfolk, and also of the advowson of the rectory of the said parish; that the said parish being of a small extent, and having but few inhabitants, by reason that great part of the lands had been turned into sheep commons, the defendant and his ancestors for a long time neglected to present any rector to the parish, and took all the tithes arising therein themselves, or else let the same to their tenants, but had provided no person to serve the cure during all the said time, whereby the cure of souls, and the performance of divine service, had been for many years past totally neglected, the parish church thereof greatly ruined and gone to decay, and the right of presentation lapsed to the crown; that the plaintiff thereupon, by virtue of a presentation dated the sixth of May 1720, was lawfully instituted, &c. therein, and is thereby entitled to receive all the tithes, both great and small, arising in the said parish; and that the defendants *Crawford* and *Mason* held land therein, which they rented of the other defendant, on which, grain, hay, grass, and other titheable matters, grew, which they had taken and converted to their own use, without setting out the tithes thereof, or making the plaintiff satisfaction for the same; and which they had, under several pretences, refused to do. The bill therefore prayed, that the defendants might account with and satisfy the plaintiff for all the said tithes.

The defendant *Le Strange*, by his answer, said, that the plaintiff seemed to confound the parish of *Ringstead Saint Andrew* and the place called *Ringstead Parva* or *Barrett Ringstead* as if they were one parish, whereas they were two distinct and different parishes and parish-churches, the one called *Ringstead Saint Peter* and the other *Ringstead Saint Andrew*; that he, the defendant, was seised of some estate in the parish of *Ringstead Saint Andrew*, but not of all the lands there, nor of the advowson of the rectory of the said parish, which belonged to the master and fellows of *Christ College*, in Cambridge; that *J. Baines*, clerk, was then the incumbent thereof; that there was a place adjoining to *Hunstanton*, called *Ringstead Parva*, or *Barrett Ringstead*, which was not a parish of itself, and had never been known by the name of *Ringstead Saint Andrew*; that neither he nor any of his ancestors had ever presented any rector to the said place; but he insisted, that they had a right to the tithes arising within the said district, they having for several hundred years received or let the same.

He denied that there was within the said district any parochial church, or that THE CROWN had any right of presentation to the same before the plaintiff obtained the same under THE GREAT SEAL, if in fact he had so obtained it, as in the bill is mentioned; or that he knew, except from the plaintiff's suggestion, that he was presented to the same; but he admitted, that within the said district there stood the remains of a small edifice, called *the Chapel Barn*, which formerly lay as a ruin, until one of his the defendant's ancestors set up a thatched roof thereon; that since that time it had been used as a barn, though in ancient times it might have been a chapel within the said precinct, where there have not been above one or two inhabitants at the same time for many years past; that it appeared by ancient writings, that the said edifice was frequently stiled *libera capella*, and sometimes *libera capella sive rectoria de Ringstead Parva*. He also said, that about the reign of *Henry the Eighth* the said chapelry and rectory, with the tithes and profits thereof, became impropriate, and that the same had ever since been reputed and stiled a free chapel or rectory impropriate, and had been accordingly held and enjoyed as a lay fee and inheritance, without any claim or interruption by any person whatsoever until the pretended claim of the present plaintiffs. He denied that there was during any part of the said time, and until the claim of the plaintiff, any chaplain, rector, or incumbent presented to the said free chapel or rectory, or that any person had, as such, officiated, taken, or received any tithes, or in any respect performed divine service there; or that the said rectory consisted of two mediocrities, which were afterwards united; or that there were formerly, or at any time since, several rectors instituted to the said several mediocrities. He also denied, that at any time since the said free chapel or rectory impropriate became a lay fee, and the inheritance of his ancestors, or at any time since the thirty-first year of *Henry the Eighth* the fabric within the said district was used as a church or chapel, or that any persons had been admitted thereto, or any way became incumbent thereof, or of any mediocrities, or other parts thereof, or had received any tithes or profits thereout down to the time of the said plaintiff's presentation; or that his ancestors first began to take the tithes during the confusion of the late troublesome times; or that they were taken on account of their default in not presenting to the said rectory; or that he had in his custody any papers or memorandums whereby it might appear that there was one or more rectors of the said free chapel or rectory impropriate in the reign of *Charles the First*, or in the troublesome times that followed that reign, or at any time since the thirty-first year of *Henry the Eighth*, either of the name or family of *Le Strange*, or of any other name or family. He also said, that he did not know whether the said tithes were appropriated to any abbey, or whether the said chapel was at any time served by any stipendiary curate, or

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whether any curate thereof was paid by any abbey, or whether such free chapel or tithes, as part of the possessions of any such abbey, were, since the dissolution, come to him the said defendant. But he insisted, that the said free chapel and the tithes within the said district did, by lawful means, come to his ancestors, and had legally descended to him; and he hoped, that after so long, quiet, and uninterrupted a possession he should not be disturbed in his enjoyment of the same. He admitted, that he might affirm that there never was such distinct parish as *Ringstead Parva*, as he apprehended the said district might belong to the said parish-church of *Hunstanton*, forasmuch as the inhabitants of the said district, together with the other inhabitants of *Hunstanton* for time immemorial had, for all divine offices, repaired to the church of *Hunstanton*, and not for the default of his ancestors providing one to officiate in the said district of *Ringstead Parva*; and that the inhabitants of the said district, for all the lands lying there, had been taxed and assessed in the rates for the repairs of the church of *Hunstanton*, and in all other parish rates and taxes; and he denied that *Ringstead Parva* had been reputed to be a distinct parish from *Hunstanton*. He admitted, that the tithes arising within the said district had not been paid or satisfied to the owners of the tithes of *Hunstanton*, and that tenths, synodals, procurations, and other ecclesiastical duties had been paid for them separately.

The defendant *Mason* by his answer said, that he resided in *Hunstanton*, and that he had been for four years tenant to *Sir N. Le Strange* of lands within the said district of *Ringstead Parva* or *Barrett Ringstead*, and had paid him for the whole tithe thereof, when sown with corn, one bushel an acre, or money in lieu, at the then current price of such corn; that for the other parts which were not arable, being coarse bushy pasture, and reputed small tithes, he had paid tithes to the minister of *Hunstanton*, where he lived, and where his stock was kept. He denied that he knew that the tithes of the said precinct were due or payable to any other person than to his landlord or his ancestors until the plaintiff claimed the same; but he said, that he believed that the said precinct of *Ringstead Parva*, though not titheable to *Hunstanton*, did lie in the parish of *Hunstanton*; and that the owners and occupiers of all the lands within the same precinct had paid, and did pay, all rates and taxes for church and poor, and other rates to, and bear offices within, the parish of *Hunstanton*.

The defendant *Sir N. Le Strange* died, and the plaintiff filed his bill of revivor and supplemental bill against his son and heir at law, to whom the said estate descended in reversion after the death of his mother, whom he made a defendant thereto; and further set forth, that the defendant *Sir T. Le Strange* pretended, that the parish-church of *Ringstead Parva* was only a chapel

chapel of ease to some other church, for that he had found by ancient writings that the same frequently was stiled *libera capella*, and sometimes *libera capella sine rectoria de Ringstead Parva*. The bill of revivor and supplemental bill therefore prayed, that the former proceedings might stand revived, and the defendants might discover the said deeds.

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The defendants appeared and answered, and the suit was revived by order dated the second day of *May* 1745; the plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and reading, on the plaintiff's behalf, the said plaintiff's institution and induction of the eighth of *June* 1720; some extracts out of the institution book of the *Bishop of Norwich* to the church or free chapel of *Ringstead Parva*, beginning *April* 1308, and ending the tenth of *October* 1526; a survey from the first fruits office, dated in the twenty-sixth year of *Henry the Eighth*, "*Rectoria sine capella libera de Parva Ringstead, Wilts, Le Strange, incumbent, valet p. ann. 76s. 3d. ob. procuracion. deduct. 7s. 7d. ob. synod. episc. 2s. remanet 66s. 8d. decima inde 6s. 8d.*;" and reading several depositions; and upon hearing the defendant's counsel; and reading a receipt signed *G. Ward*, dated the seventeenth of *May*, in the thirty-first year of *Henry the Eighth*, of six shillings and eightpence for the tenths of the chapel of *Ringstead Parva*; several other receipts for the tenths of the said chapel, beginning the first of *January* 1573, and ending the twelfth of *April* 1711; an entry of a payment of threshing tithe corn of *Little Ringstead*, dated the twelfth of *December*, in the thirty-second year of *Henry the Eighth*; another, dated in the thirty-fifth year of *Henry the Eighth*, for threshing tithe corn of *Barret Ringstead*; three others; several depositions for the plaintiff; and on offering to read the deposition of *J. Gould* to the fifth interrogatory upon his cross-examination, which was disallowed by the Court; several depositions on the defendant's behalf; and upon offering to read an ancient paper book, entitled *Hunstanton Church Book*, containing entries of a former vicar of the tithes of *Hunstanton* from 1615 to 1621, and a terrier of the glebe of the vicarage of *Hunstanton*, dated the twelfth of *February* 1635, made by the vicar and parishioners of *Hunstanton*, which were objected to by the plaintiff's counsel, and on hearing the defendant's counsel the objection allowed by the Court; and upon offering to read several papers purporting to be assessments made by the parishioners of *Hunstanton* to the church, poor, and land tax, which were objected to by the plaintiff's counsel, and the objection over-ruled; and upon reading the said several rates and assessments, beginning the thirtieth of *July* 1662, and ending the sixteenth of *April* 1688; and upon hearing counsel for the defendants, the cause,

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after having been on for several days, was adjourned over for the judgment of the court ; and on this day

THE COURT unanimously declared, that the plaintiff, as rector of *Ringstead Parva*, is entitled to all tithes, both great and small, arising within the said rectory of *Ringstead Parva*; and ordered the defendant *Mason* to account for and pay to him the value of all his tithes, both great and small arising within the said parish during the time demanded by the bill, with costs to be taxed: further directions to be reserved till after the report.

TRIN. TERM,
22. GEO. 2.

PEARSE against HALL ; et è Contra.

Devonshire, 22d June 1749.

The landholders of *Salcombe*, in *Devonshire*, file their bill against the vicar to establish the following *modus*es :

3d. a cow, 2d. a heifer, and 1d. a calf, in lieu of the tithes of milk, butter, and cheese ;
1d. a colt ; 1d. for garden stuff ;

1d. for firewood, turf, and other fuel ;

1d. a-year for a bullock after the first year, in lieu of tithe pasturage ;

eggs in lieu of tithe poultry ; that tithe pease are to be paid in poaks, and beans in cocks, except what are consumed green by the family ;

THE plaintiffs, as inhabitants of the parish of *Salcombe*, in the county of *Devon*, on behalf of themselves and other the inhabitants land owners of the said parish, by their bill set forth, that in the said parish there had been, time immemorial, and then was, a rectory and parsonage impropriate, as well as a vicarage ; that the tithes of all corn and grain, except pease and beans, arising in the said parish, or the titheable places thereof, had been and ought to be paid to the rector and impropriator of the parish, or to his farmers ; that the tithes of pease, beans, and other things, ought to be paid to the vicar, either in kind, or according to the several customs and manners of tithing therein ; and that there are, and have been time immemorial, the following several *modus*es, customs, customary payments, and manners of tithing within the said parish and the titheable places thereof, yearly, to the vicar of the parish, viz. for every milch cow, threepence ; for every heifer at the first calving, twopence ; and for every calf of such cow or heifer, one penny ; all payable yearly at *Easter*, in lieu of the tithes of the milk, butter, and cheese, of such cow, heifer, and calf ; for every colt fallen there, one penny ; and one penny, called a *garden penny*, in lieu of the tithes of all flowers, herbs, roots, fruits, cabbages, onions, and other things usually grown in gardens, and used by the owners thereof within the said parish ; one penny, called an *hearth penny*, in lieu of the tithes of all wood, furze, turf, and other fuel within the said parish ; for every barren bullock sold out of the parish after one year old, one penny for every year such bullock should be above the age of one year, in lieu of the tithe of such bullock, and the pasturage thereof ; that eggs are paid in lieu of the tithes of all poultry, fowls, chickens and the produce thereof, all payable yearly at *Easter* ; that the parishioners and owners yearly, at their own charges, set out the tithes of their pease by the ridge or poak, and the tithes of beans in sheaves and cocks, and in recompence thereof are free from paying any tithes for such pease and beans as were gathered green and spent in their respective

respective houses; that the parishioners and owners ought carefully to gather, preserve, measure, and tell out the tenth or tithe of their apples and pears (except what are spent in their respective houses and families), -and in recompence are freed from paying any tithe of such apples and pears so spent; that they at their own costs cut and mow their grass yearly for hay, and put or set up the same into poaks or cocks, and then set out the tenth poak or cock for the tithe, and in lieu of the tithe of the after-grass of such meadows or grounds for that year where such grass was grown, mowed, or cut; that the tithe of lambs had been usually paid within the said parish in this manner, viz the owners to take two, and the vicar or his agent the third, and then the owner seven; and in like manner for every other ten lambs; and if there be any odd lambs under ten, and not seven, the owner is to pay the vicar a groat for every such odd lamb, and the lambs are to be tithed and taken away, and the said money paid yearly at *Saint Mark's Tide*, if demanded; that the tenth fleece of the parishioners and owners of sheep within the said parish and the titheable places thereof yearly shorn, is to be put and tithed as it comes from the shearer, and to be fetched away by the vicar or his servant or agent, they having notice of the time and place of shearing; and if there be any odd fleeces under ten, they are to remain on account till the next shearing, when the vicar is to have the tenth fleece upon account of them; that the payment of such wool and lamb is in lieu and satisfaction of the tithes yearly coming of all sheep and lambs depasturing there: that every communicant pays yearly, at *Easter*, twopence to the vicar, in lieu of all offerings and oblations of such person for that year; that all such *modus*es, customary payments, and manners of tithing, had been constantly made, used, answered, and paid by the parishioners of the said parish to the vicars of the said parish for the time being, and received and acquiesced in by them accordingly; that the defendant being lately inducted into the said vicarage had denied there were any such *modus*es, customary payments, or manners of tithing, and had libelled some of the plaintiffs for their tithes in kind, although they were under composition with him, and had paid the same up until *Christmas* last. The bill therefore prayed, that the several *modus*es, customs, and manners of tithing might be established by the decree of this court, and the defendant enjoined from proceeding against the plaintiffs in the ecclesiastical court.

The defendant by his answer said, that he was inducted into the vicarage in *January* 1729; that there was within the parish a rectory or parsonage impropriate; that the tithes of all corn and grain, except pease, beans, and vetches, belonged to the impropriator; but that they, and all other tithes, belonged to the vicar thereof; that he neither knew nor believed that there

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that tithe apples and pears are to be paid by measure, except what are used in the family;

that tithe hay is to be set out in grass cocks, and no tithes paid for after grass;

that the vicar is to have the third lamb in ten, and a groat for every odd lamb;

that the tenth fleece is to be taken as the sheep come from the shearer, and the odd fleeces to remain till the next shearing day;

that 2d. a-head is due for *Easter* offerings.

The vicar says, that the tithes of corn and grain belong to the impropriator;

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et à contra.
admits the *moduses* of 1d. for garden stuff, exclusive of apples and pears; 1d. for firewood; and 2d. for *Easter* offerings;

and insists on all other small tithes in kind.

The vicar files a cross bill.

The landholders insist on the *moduses*.

The evidence read.

there had been, time immemorial, the several *moduses*, customary payments, or manners of tithing, as stated in the bill, or any other customs used in the said parish, save the garden penny (except apples and pears), the hearth penny, and twopence for *Easter* offerings, as mentioned in the bill. He admitted, that several of the parishioners had been under composition with him for several years; and said, that of those who were not he took tithes in kind, or the values in money; and that they never pretended to pay the said *moduses*, except the garden penny and hearth penny, and *Easter* offerings. He said, that his predecessor delivered him a list of the compositions, which he had set forth in a schedule to his answer, but which was of no force, being drawn up by the parishioners, and not signed by any of the vicars. He insisted, that he was entitled to all such tithes as were due to him as vicar, in kind; except the garden penny and hearth penny. He admitted that he had proceeded in the ecclesiastical court against some of the plaintiffs, and hoped that he should not be hindered from so doing.

The vicar filed a cross bill and a supplemental bill against the plaintiffs *Pearse* and *Lee* for an account and satisfaction of their several tithes due from them to him.

The defendants put in several answers, thereby insisting on the several matters therein particularly mentioned in discharge of the said demands.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides in the original cause, and the same ordered to be read in the cross cause; and pursuant to order, both causes came on to be heard together; and upon hearing counsel for all parties; and reading an order, dated the fourteenth of *June* instant, whereby the proceedings in two former causes in this court, *Avent v. Drake, et à contra*, saving just exceptions; which proceedings being offered to be read, the same were objected to by *Hall's* counsel; and on hearing counsel for all parties, the same was over-ruled; and upon reading the copy of the bill between *Drake v. Avent*, clerk, in *Trinity Term*, in the twenty-first year of *Charles the Second*; and the defendant's answer; and the like in the original cause; the deposition of *J. Smith*, taken in the said original cause, being offered to be read, was objected to by the defendant *Hall's* counsel; and the plaintiff's counsel heard in answer to the said objection; and on reading the first answer of the defendant *Hall* to the original bill; and the depositions of *J. Blake* and others, dated the nineteenth of *July* 1670; and the schedule thereto annexed; and reading several depositions taken in these causes; and upon full debate of the matter;

THE COURT ordered the original bill to be dismissed as to the several *modus*es or customary manners of tithing pease, beans, apples, and pears, insisted upon by the plaintiffs to be in lieu and satisfaction of such pease and beans gathered green, and used in their respective houses; and likewise in lieu of the apples and pears gathered and used in their houses.

THE COURT also ordered the bill to be dismissed as to the several *modus*es of tithing hay insisted on to be in lieu of the tithes of after-grass; and also as to the customary manners of tithing wool, lambs, and poultry.

THE COURT also ordered the several *modus*es of the hearth penny, the garden penny, the twopence for *Easter* offerings, and the one penny for each colt to be established, as set forth and insisted on by the plaintiffs in their bill.

THE COURT also ordered the several *modus*es as to cows, heifers, calves, and barren bullocks, as set forth in the said bill, to be referred to a trial at law; and further directions reserved till after such trial.

THE COURT also ordered an injunction to issue to stay the defendant *Hall's* proceedings in the spiritual court against any of the plaintiffs in the original bill.

The plaintiffs brought their action to try the said issues; but the defendant *Hall* declined trying the same; and on the twenty-fifth of *May* 1750, after hearing counsel for all parties;

THE COURT ordered the several issues so directed to be tried to be taken *pro confesso* against the defendant *Hall*; and that the said several customs, *modus*es, or customary payments be, and the same are hereby confirmed and established.

THE COURT also ordered, that the defendant *Hall* do and shall, during his being vicar of the said parish of *Salcombe*, observe and perform the said customs hereby established, and also those established by the said former decree; and that he accept and receive the said several *modus*es or customary payments established as aforesaid in lieu and full satisfaction of and for all the tithes of the several titheable matters and things for which the same are alledged to be payable by the original bill, but without costs on either side.

THE COURT also ordered, that the defendants *Pearse* and *Lee* do severally account with, satisfy, and pay *Hall* the usual compositions set forth in their answers of one shilling in the pound, according to the yearly values of their lands by them respectively occupied in the said parish, or in the titheable places thereof, as set forth

PEARSE
against
HALL;

et à Contra,

The original bill dismissed as to the *modus*es respecting pease, beans, apples, and pears;

and also as to the *modus*es respecting the tithes of hay, wool, and lambs.

The *modus*es as to firewood, garden stuff, and *Easter* offerings, established.

Issues directed as to the *modus*es for cows, heifers, calves, and bullocks,

An injunction to stay proceedings in the spiritual court.

The vicar refuses to try the issues.

The *modus*es as to cows, heifers, calves, and bullocks, taken *pro confesso*.

The vicar ordered to receive the *modus*es established.

The defendants ordered to account according to the usual compositions for the other tithes.

PRAYER
against
HALL;
et c. Contra.

forth in their said answers, in lieu and full satisfaction of all their tithes arising and renewing on their said lands up to *Lady Day* last, but without costs on either side; but the said *Hall* is not to be bound any longer by the said compositions, or obliged to accept the same in lieu of the said defendant's tithes from thenceforth or for the future: the deputy remembrancer to make his report herein, if the parties differ, to settle the said account. But the said bills, and also the original bill, as to all other matters, are to be, and hereby are dismissed, but without costs on either side; and the said injunction continued till further order of this court; but the defendant *Hall*, notwithstanding the said injunction, is at liberty to proceed to recover and receive out of the said court the money tendered and paid into the same by the plaintiff *P. Godfrey*.

T. PARKER.
H. LEGGE.

EASTER TERM
23. GEO. 2.

TEMPEST against BARKER.

Yorkshire, 17th May 1750.

There is a pension of 3l. a-year payable by the rectors of *North Burton*, in *Yorkshire*, to the grantees of the crown.

THE bill stated, that *Charles the Second* was seised of several fee-farm rents, pensions, and other rents, in right of his crown, or otherwise, and particularly of all that annual rent or pension of three pounds issuing out of or from the church of *North Burton*, in the east riding of *Yorkshire*, which was then paid by the rectors of the said church, the same being parcel of the collegiate church of *Beverley*; that by several acts of parliament made in the said reign, and by letters patent, his majesty granted to *Lord Hawley* and others divers fee-farm rents, and amongst others the said rent of three pounds therein mentioned in trust, and which had been duly paid by the rectors to the ancestors of the plaintiff; that the defendant *Barker's* husband, on the eighth of *June 1703*, was instituted and inducted into the said rectory, and enjoyed the same for twenty-four years; that his son succeeded him, and by neglect the said rent of three pounds a-year had not been paid for several years. The bill therefore prayed, that the defendants might be compelled to pay the said fee-farm rent or pension of three pounds, and the arrears thereof, to the plaintiffs, during the time that *Robert* and *Thomas Barker* were incumbents on the said church; and that the said *Thomas* might be compelled to pay the same for the future; and that the said rectory or church of *North Burton* may for the future be declared liable thereto and chargeable therewith.

The defendants appeared and answered; the plaintiffs replied to the answers of the defendants *Barkers*; and the defendants rejoined; and witnesses were examined on both sides; and upon hearing

hearing counsel on both sides ; and reading several old deeds and rentals ;

TEMPEST .
against
BARKER.

THE COURT declared, that the annual rent or pension of three pounds mentioned to be issuing out of and for the church of *North Burton*, in the east riding of the county of *York*, is a proper charge upon the said church of *North Burton*, otherwise *Cherry Burton*, whereof the defendant *Thomas Barker* is rector or incumbent, and established the same ; and thereupon ordered the defendants the *Barkers* to account for the same, and all arrears, with costs of suit ; and that the defendant *Thomas Barker* do also continue to pay the same for the future to the plaintiffs and their heirs, &c. &c.

The deputy made his report, dated the fourteenth of *June* last ; and the Court, on the third of *July* 1751, confirmed the same with subsequent costs.

T. PARKER.
E. CLIVE.
H. LEGGE.

RICKWOOD against TRIMMER.

Hampshire, 21st *June* 1750.

TRIN. TERM,
24. GEO. 2.

THE lessee of *J. Brown*, rector of *Bramshot*, in the county of *Hants*, claimed all the tithes, as well great as small, and all offerings and duties belonging thereto, since *Michaelmas* 1747, for one year, arising on a farm occupied by *Trimmer*, with a right of common on *Bramshot Common*.

The rector of *Bramshot*, in *Hampshire*, is entitled to his tithes in kind.

The defendant *Trimmer* said, that *Brown* had, by a parol agreement made about a month after *Lady Day* 1747, let to him all the tithes of the lands in his occupation for one year for seven pounds, five shillings, which he had paid to him ; and therefore he insisted, that he was entitled to all the said tithes to *Lady Day* 1748. He admitted, that before and ever since *Michaelmas* 1747 he had occupied a farm in the said parish, with a right of common on *Bramshot Common*, whereon he had, during the said time, several titheable matters and things, as set forth in his answer.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and the cause came on to be heard on the twenty-second of *February* last, when it was ordered to stand over for the plaintiff to amend his bill, and make *Dr. Brown* a party ; and the plaintiff having amended his bill, the doctor put in his answer, and said, that in *May* 1746 he was instituted into the said rectory, and had let the tithes thereof to the plaintiff, as stated in the bill.

THE

RICKWOOD
against
TRIMMER.

THE COURT, by consent, ordered *Trimmer* to pay, on or before *Lammas Day* next, twenty shillings, but without costs; and by the like consent, that the bill be dismissed as against *Brown*, but without costs.

THE COURT also declared, that the *modus*es set up by *Trimmer* as to lambs, calves, and milk, are unreasonable and void; and as to the *non decimando* insisted on by the defendant as to eggs, garden stuff, and fruit, that tithes are due of common right, though never paid within the parish; and that the tithes of the second mowing of grass and clover are due.

MICH. TERM,
24. GEO. 2.

WHITEHEAD against FLINTOFT.

Yorkshire, 7th December 1750.

The lessee of the impropriator of *Kirkdale*, in *Yorkshire*, claims the tithes of the parish in kind.

THE bill stated, that the chancellor, masters, and scholars of the university of *Oxford*, being impropriators of the impropriate rectory of *Kirkdale*, in the county of *York*, did, by indenture dated the twenty-third of *March* 1746, demise to the plaintiff, for fourteen years, the said rectory impropriate, with all and singular the profits and tithes thereto belonging (except the vicarage of the parish-church of *Kirkdale* and the right of presentation thereto); that by virtue of the said demise, he was entitled to all the great and small tithes within the said parish, except those belonging to the vicar; that the defendants had, for several years past, occupied land, whereon they had great and small tithes, the tithes whereof they had refused to set out, or to make any satisfaction for the same.

The defendant *Flintoft* says, that his lands were parcel of the possessions of the abbey of *Rivalx*, an abbey of the *Cistercian* order, which, at the dissolution of abbies, became vested tithe free in the crown by the statute 31. Hen. 8. c. 13.; that *James the First* granted all the said abbey lands to *Phillips*; that *Phillips* conveyed them to *Rively*; that *Rively* conveyed them to *Eure*; that *Eure* conveyed them to *Gibson*, together with all the tithes of the manor of *Wiborne*;

The defendant *Flintoft* insisted, that his lands were formerly, and before the dissolution thereof, parcel of the possessions of the late dissolved monastery or abbey of *Rivalx*, the abbot and convent of which, as he had heard, were of the order of *Cisterrians*, and thereby exempt from the payment of tithes of lands in their own manurance; that the said abbey was dissolved by the statute of 31. Hen. 8. and all their lands thereby vested in the crown, free from the payment of tithes; that *James the First* being seised thereof did, by his letters patent dated the eighth of *April*, in the sixth year of his reign, grant the same to *F. Phillips* and *R. Moore*; and that they, by deed dated the eleventh of *May* in the same year, and enrolled in chancery, conveyed the same to *G. Rively* in fee; that *G. Rively*, by his deed indented and enrolled, dated the sixth of *April*, in the eighth year *James the First*, conveyed the same to *W. Eure* in fee; that *W. Eure* did, by indenture dated the eleventh of the same month, in consideration of thirty pounds, and of the payment of a rent-charge of eighteen pounds yearly to be issuing out of the manor of *Welborne*, grant and convey the same to *Sir J. Gibson*;

in fee, with all and all manner of tithes whatsoever, and all other ecclesiastical rights and duties, and all and every thing and things paid or to be paid or allowed in lieu thereof, which at any time thereafter should happen to become due or payable out of all that the said *Sir J. Gibson's* manor of *Welborne*, or out of the mills called *Howkell Mills*, and several grounds in the said indenture mentioned, to have and to hold the same for ever; and he alledged, that all the lands in his occupation lying within the said parish were held of, or lying within the said manor belonging to the said *Gibson*, and which by several descents and mesne conveyances is now vested in *J. Robinson*; that no tithe of any kind, or any composition for the same, had ever been paid for the several lands in his occupation within the said parish since the time of *Sir J. Gibson's* purchase, except to him and those claiming from him.

The defendant *Stamper* put in the like answer, but said, that the lands he occupied were formerly the inheritance of the *Savilles*, who purchased the tithes thereof of the said *Sir J. Gibson* or his heirs, and that no tithes of any kind, or any composition for the same, except that he paid the plaintiff the *modus* of ten shillings a-year in lieu of all the lands in his occupation in the said parish; and apprehended that no tithes in kind had ever been paid for any of the said lands; but that if such *modus* should thereafter appear to be payable for part only of the said lands, then he insisted, that the residue of the said lands not covered by the said *modus* were not liable to the payment of tithes, or any *modus* in lieu thereof, to the plaintiff, for that the lands were part of the said abbey of *Ripault*.

The plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel;

THE COUNSEL for the defendant objected, that the owners of the lands from whence the plaintiff by his bill demanded tithes are not parties in the cause; but upon hearing the plaintiff's counsel in answer, THE COURT over-ruled the objection.

THE COURT read several depositions; the indenture of demise to the plaintiff, dated the third of *March* 1746; an indenture, quadripartite, signed *A. Oxley* and others, dated the twenty-fourth of *March* 1745; the defendant *Stamper's* answer; and an indenture, signed *W. Eure*, dated the eleventh of *April*, in the eighth year of *James the First*.

But it appearing to the Court, that the defendants had not proved the grant from the crown under which they claimed to be exempt from the payment of the tithes; and the plaintiff desiring that in such case he should be at liberty to give further proof of a title in the university if he thought proper; the further hearing was adjourned, without paying any costs of the

WHYTEHEAD
against
FLINTOFF.

that his lands were held of, or lying within the said manor; and that no tithes had ever been paid for them, except to the grantees of the manor.

The defendant *Stamper* says, that his lands were parcel of the said manor;

that he had paid 10s. as a *modus* in lieu of tithes for part of his lands;

that the other part are tithes free.

An objection that the land-owners were not parties over-ruled.

The evidence read,

The grant under which the exemption is claimed not being proved, and the plaintiff desiring to make the impropriator a party,

WHYTEHEAD
against
FLINTOFF.

the Court permitted the bill to be amended, and the defendant to exhibit interrogatories.

the day on either side; the plaintiff permitted to amend his bill as he should be advised; to exhibit interrogatories to be approved of by the deputy remembrancer of this court; and to examine witnesses thereon to prove any right in the university, his lessors, to demand and have the tithes in question in this cause; and the defendants were also at liberty to exhibit interrogatories (in like manner to be approved of), and to examine witnesses thereon to prove the grant from the crown to *F. Phillips* and *R. Moore* mentioned in the answer, or any other grants, deeds, or entries under which they, or either of them claim to be exempted from the payment of tithes in kind to the plaintiff, for the lands in their occupation in the said parish.

The cause heard, and the several grants read.

On the ninth of *May* 1751, the cause came on again pursuant to the said order; and upon reading, for the defendants, a grant, dated the eighth of *April*, in the sixth year of *James the First*, to *Phillips* and *Moore*; a copy of an indenture, enrolled in chancery, dated the eleventh of *May*, in the sixth year of the said *James*, from *Phillips* and *Moore* to *G. Rively*; an indenture, dated the eleventh of *April*, in the eighth of the said king, between *Sir William Eure* and *Sir John Gibson*; another indenture, tripartite, dated the twenty-ninth of *March* 1650, between *Sir John Gibson* and his wife, *G. Grange, &c.*; and several other indentures, depositions, and receipts; and on full debate, and consideration of the premises thereon had;

The bill dismissed with costs.

THE COURT ordered the bill to be absolutely dismissed, with costs to be taxed for the defendants.

T. PARKER.
E. CLIVE.
H. LEGGE.
S. S. SMYTHE.

TRIN. TERM,
26. GEO. 2.

ROCK against MERRICK.

Somersetshire, 8th June 1752.

The vicar of *Murlinch*, in *Somersetshire*, claims all the tithes of cows, calves, wool, milk, sheep, and hay, in kind.

THE vicar of *Murlinch*, in the county of *Somerset*, claimed all small tithes from *Lady Day* 1748, particularly the tithes of milch cows, calves, sheep, wool, milk, and hay.

The defendant insists on several *modus*es in lieu of the tithes of

The defendant admitted, that in 1748 he occupied, in the said parish, several closes of meadow ground, containing fourteen acres, of the yearly value of fourteen pounds; and he named the closes in his answer; and that he also occupied several other acres in the following years; but he insisted, that the following *modus*es had been immemorially paid to the vicar in lieu of the several tithe-able

sole matters following, that is to say, for every milch cow depastured in the parish, threepence; for every heifer at her first calving, twopence, in lieu of the tithe of their milk; for every colt, twopence, unless sold within a year after it was foaled, in which case the tenth shilling of the price was due for tithe; that the owners and occupiers of the said fourteen acres of meadow ground had used and ought to pay to the vicar for the time being, twopence an acre yearly, and no more, in lieu of the tithe of all grass made into hay thereon; that for *South Close* the plaintiff was entitled to tithes in kind, or to one shilling each acre, at his option; that by like custom the tithe of calves was paid, viz, if any occupier had but seven calves, the vicar took the seventh in course as it fell, if each lived to be seven weeks old; and where there were eight, nine, or ten calves, the vicar took the eighth, ninth, or tenth calf in course as it fell, when seven weeks old; but in case there were not seven calves, then the vicar was entitled to one penny each calf, and no more; and so in like manner when there were more than ten, and not above twenty calves; that by the like custom, sixpence yearly, and no more, was due from each parishioner for an *Easter offering*, and the tithe of eggs and garden stuff; that all the said *modususes* were due and payable at *Easter* yearly, and had been received and accepted by all former vicars for time beyond memory; and that all other vicarial tithes the plaintiff was entitled to in kind. And he set forth the several titheable matters and things he had in the said years; and said, that he had paid the plaintiff the several *modususes* until 1750, when he refused any longer to accept of the same, and insisted on having his tithes in kind.

Rock
against
MEARICK.
cows and heifers,
colts,
hay,
calves,

Easter offerings.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs in the cause;

THE COURT ordered the bill, as to the tithes of milk, calves when under seven in number, colts, garden stuff, eggs, hay arising on the fourteen acres of meadow ground, and *Easter offerings*, to be dismissed.

The *modususes* as to cows, heifers, calves when under seven, colts, garden stuff, eggs, and hay, established.

And the plaintiff waiving any account touching the tithe of wool shorn by the defendant in 1750; and also waiving any account touching the tithe of calves in that year;

The demand as to wool, &c. waived.

THE COURT also ordered the bill with respect to the matters so waived, and all other demands therein mentioned, to be likewise dismissed; and that such several dismissions be, by the consent of all parties, without costs.

The bill dismissed without costs.

MICH. TERM.
26. GEO. 2.

RICE *against* MANNING.

Norfolk, 12th December 1750.

The rector of *Foulsham*, in *Norfolk* claims the great and small tithes in kind.

THE rector of *Foulsham*, in the county of *Norfolk*, claimed all tithes, both great and small, oblations, obventions, and *Easter* offerings, arising therein.

See *Rice v. Bensley*, post. 14th December 1752.

The defendant *Manning* says, that no tithes are due for grass cut on the headlands;

and that he set out the tithes of his first and second crops of clover, but that the rector neglected to take them away.

The defendant *Manning* admitted, that he had cut grass from off the headlands of his lands, and made the same into hay, the tithe whereof he did not set out, or make any satisfaction for, because no tithes were due or payable by law for such grass, the quantity being so inconsiderable, and because the plaintiff had often refused to fetch the same away when duly set out, and had notice so to do. He also admitted, that he had growing on part of his lands two crops of clover; and he said, that he had cut and made the same into hay, and had set out the tithe of the first crop; and that the plaintiff had taken the same away; and that he had also set out the tithe of the second crop of the said clover, and given the plaintiff notice thereof; but that he had neglected to take the tithe so set out away; and that his cattle had eat the same.

The defendant *Gaunt* says, the rector neglected to fetch the tithes of barley.

The defendant *Gaunt* said, that in 1746 he had growing on part of his lands barley, which he had mowed, and that he had duly set out the tithe thereof; but that the plaintiff seeing the same so set out had ordered his tithing-man not to fetch the same away, and it had rotted on the ground.

The defendants say, that in 1743 the rector compounded with them for the tithes of turnips, milk, calves, wool, lambs, and agistment, and had continued to receive the sums until *Lammas* 1747, and had not given them notice of his intention to take tithes in kind before the first of *August* 1747.

The other defendants insisted, that no tithes in kind had ever been paid or taken for turnips, milk, calves, wool, lambs, or agistment of barren and unprofitable cattle; but that the following compositions had been paid and accepted by the rectors in lieu thereof, at *Lammas* yearly, or so soon after as demanded, viz. two shillings an acre for turnips growing, and one shilling an acre for all feeding land, in lieu of all tithes of milk, calves, wool, lambs, and agistment of barren and unprofitable cattle, deducting thereout, by the name of *the Horse Pasture*, two shillings a-piece for every horse-beast kept by the occupiers of such lands respectively for tilling their arable lands in the said parish, the plaintiff being entitled to the tithe of all corn, grain, and hay therein; that immediately after the plaintiff became rector, and before any thing considerable had become due to him, he entered into an agreement with the parishioners in general to accept, and they agreed to pay the said composition; and that the same had been accepted until *Lammas* 1747, at which time he refused to take the same, unless they would also pay him five shillings a cow for the tithes of milk and

and calves ; and therefore they insisted, that as the plaintiff did not give them proper notice that he intended to break through the said compositions, he is not entitled to tithes in kind for the same until after the first of *August* 1747.

RICE
against
MANNING.

By an order made on the twenty-first of *February* 1749, the defendants were ordered to pay to the plaintiff the several sums of money therein mentioned for the tithes of their turnips, after the rate of two shillings for every acre of such turnips, the plaintiff having offered to accept the same without costs ; which the defendants agreed to. The plaintiff amended his bill, and, pursuant to the said order, struck out his demand therein for tithe of turnips.

The rector consents to take as an acre for turnips.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading several depositions on both sides ; several receipts ; and the defendants answers ; and on offering to read an entry in the tithing-book of the former rector of the parish of the said composition, and the same being objected to by the defendant's counsel, and the objection, on hearing the plaintiff's counsel thereon, allowed as to the said entry ; and on reading several entries in the tithing-book of the said rector, viz. an entry in the thirty-fourth folio 1719, *Robert Brightwell's* tithes, received more for wool and offerings, six shillings ; and in other folios ; of *R. Neal*, for tithe of wool and lamb, ten shillings ; for ditto, two shillings, twenty-four acres of feeding-lands, called *Ripps* ; one shilling and fourpence for eighteen acres, called *Chapman's* ; eighteen shillings for wool and lamb ; and many other entries for wool and lamb, and for fowls, and for feeding lands ; and upon reading the further answer ; a decree in a cause of *Atbill v. Chapman*, of *Hilary Term*, in the tenth year of *William the Third* ; and another decree in the same cause, in *Trinity Term*, in the thirteenth year of the said king, and in *Michaelmas Term* following ; and on a long debate of the matter ;

The evidence read.

THE COURT declared, the plaintiff was by law entitled to the tithe hay of the grafs growing on the headlands in the parish : but he having waived his demand against the defendant *Manning*, it was ordered, that the bill, as to the demand of tithe of the defendant *Manning's* headlands, and also as to the tithe of his apples, be dismissed with costs.

The tithe hay of the headlands decreed.

THE COURT also ordered the bill to be dismissed as to the plaintiff's demand of tithes of the defendant *Gaunt's* barley growing in the *Three Acre Close* for 1746.

The bill dismissed as to tithe barley.

THE COURT likewise ordered the bill to be dismissed as to the plaintiff's demand for milk and calves in kind to *Lammas*

The bill dismissed as to milk and calves.

RICE
against
MANNING.
Easter offerings
decreed.
Tithe honey de-
creed.
Tithe of gardens
decreed.

Day 1747, but without prejudice to his demand from that time.

THE COURT further ordered the defendant *Caston* to account for his *Easter* offerings for himself and family, but without costs; the defendant *J. Yarham* and *S. Caston* to account for the tithe of honey to *Lammas Day* 1747; the defendants *Manning* and others to severally account for the tithe of their garden stuff and fruit to *Lammas Day* 1747 (except for the tithes of *Manning's* apples as aforesaid).

The tithes of
the two crops of
clover decreed.

THE COURT also ordered *Manning* to account for the value of the tithe of his two crops of clover which he had growing on the lands in 1746.

The tithes of
wool and lamb
decreed.

THE COURT also ordered *Manning* and *R. Scaman* to account for the tithes of their wool and lambs to *Lammas Day* 1747; the defendants *Yarham* and *W. Collison* for their tithes of lambs and wool during the time they had the same.

The tithes of
milk and agist-
ment decreed
according to the
composition.

THE COURT also ordered all the defendants to account for the tithes of their milk, calves, and agistment to *Lammas Day* 1747, upon the foot, and according to the said composition, viz. after the rate of one shilling an acre for the meadow and pasture lands by them held in the said parish, or the titheable places thereof, at the rent of ten shillings an acre, or under; and after the rate of two shillings in the pound for all such lands by them respectively held within the said parish at above the rent of ten shillings an acre, in proportion to the respective rent thereof, but without any deduction thereout for *horse pasture*, as insisted on by the defendants in their answer, with costs to this time. Further directions to be reserved till after the report.

HILARY TERM
24. GEO. 2.

HARPUR against SALT.

Staffordshire, 20th February 1750.

The impropriator of *Alstonfield*, in *Staffordshire*, claims the tithes arising on lands within the manor of *Elkstone*, in the said parish.

THE impropriator of *Alstonfield*, in the county of *Stafford*, claimed the tithes of all corn, grain, hay, wool, and lambs, yearly growing, &c. within the manor of *Over Elkstone*, otherwise *Upper Elkstone*, in the said parish; and stated, that his ancestors and their lessees had been in possession of the said rectory one hundred and sixty years and upwards; that during all that time they, and particularly his grandfather, had received, for forty years together, and upwards, all the aforesaid tithes arising on all the lands in *Upper Elkstone*, or money in lieu thereof, as a temporary composition; and that the defendants had now refused to pay the said tithes.

The

The defendants denied that the plaintiff was, to their knowledge, seised in fee of the rectory, or that he had any title to the tithes of the parish, or that the owners of the rectory had immemorially received, or been entitled to receive the tithes of all corn, grain, hay, wool, and lambs, except as after-mentioned; or that the plaintiff is entitled to the tithes arising on all or any of the lands in the manor of *Over Elkstone*, otherwise *Upper Elkstone*, in the said parish, or that the tithes of those lands belonged to the said rectory; for that the said rectory was formerly parcel of the possessions of the abbot and convent of *Cumbermeer*, in *Cheshire*, and the said manor parcel of the priory of *Trentham*, in *Staffordshire*.

The defendants *Salt* and others said, that they had been tenants to the defendants *W. Gould*, *Thomas Cooke*, and *Samuel Weston*, for many years past, and had peaceably enjoyed and quietly possessed the several messuages, lands, and tithes arising thereon, situate in the said manor; and insisted, that as the said messuages and lands were part of ten messuages after mentioned to be granted by *Edward the Sixth* to *Sir W. Herbert, Knt.* the tithes thereof were part of the possessions of *Trentham Priory*; and having been granted to the said priory before the council of *Lateran* had either never belonged to the said rectory, or were held by the priors discharged by bull or real composition of all tithes; that such exemption continued after the dissolution of the said priory; and that no tithes had been paid for the same since such dissolution. The answer then further stated, that *Edward the Sixth* being seised and possessed of the said manor, and of ten messuages, lands, and tithes, within the said manor, did, by letters patent dated the seventh of *May*, in the fourth year of his reign, grant to *Sir W. Herbert*, his heirs and assigns, "all those ten messuages and tenements, and all lands, meadows, "pastures, pasture grounds, commons, and other hereditaments "whatsoever, thereto belonging, then or then late in the tenure "of *J. Salt* and others, situate in *Elkstone*, in the parish of "*Alstonfield*, and all that the court leet or view of frankpledge, "and every thing thereto belonging, then lately belonging to "the priory of *Trentham*, then lately dissolved, and parcel of "the possessions thereof, so fully, freely, and perfectly held and "come to the said *Edward the Sixth* or *Henry the Eighth*, by "what right or title soever, TO HOLD the same of the said "*King Edward the Sixth* as of his manor of *East Greenwich*, in "*Kent*, by fealty only, in free socage, and to pay yearly to him, "his heirs and successors, twenty shillings at *Michaelmas* for all "services due, &c.;" and therefore, that it was the intention of the said grant that the ten messuages with the appurtenances so granted to the said *Sir William* should be discharged from the demand of all tithes; and they insisted, that the said lands were exempted from any payment, except the payment of the said

HARPUR
against
SALT.

The defendants say, that the rectory was formerly parcel of the possessions of the abbey of *Cumbermeer*, in *Cheshire*; and the manor parcel of the priory of *Trentham*, in *Staffordshire*;

that the lands they hold were parcel of the manor;

that the manor belonged to the priory before the council of *Lateran*; and was either no part of the rectory, or, if so, was discharged of tithes by the said council; that the said manor and priory came to the crown title free; that the crown granted the said manor, so discharged of tithes, to *Sir W. Herbert*, to hold of his manor of *East Greenwich*, on paying 20s. a-year to the crown;

that the said 20s. a-year have been regularly paid;

HARPUR
against
SALT.

that the plaintiff
is entitled to
certain portions
of tithes in dif-
ferent parts of
the parish ;

but that the
lands they hold
are tithe free.

The grant of
the rectory from
Queen Elizabeth
to *J. Harpur*
read.

The tithes of
the manor of
Elkstone decreed
to the rector of
Alstonfield, with
costs.

twenty shillings a-year. The defendants further stated, that they, their fathers, and their grandfathers, had occupied the said ten messuages, with their appurtenances, for sixty years and upwards, by mesne conveyances from the said *Sir William Herbert* ; and that the said yearly sum of twenty shillings had been duly paid to those who were legally entitled thereto. They also stated, that the plaintiff's grandfather and father had been, for many years, owners of the rectory of *Alstonfield*, and as such were entitled to the tithe of corn, and to half the tithe of hay in some parts of the said parish, and to certain compositions for the same in other parts thereof, and to neither the one or other in other parts of the parish ; and they denied that the plaintiff, or any one for him, till *January 1748*, had ever requested them to give an account of the tithes claimed by the bill, or to make any satisfaction for them ; and they insisted, that they were not bound to set out any account thereof, as they conceived the plaintiff was not entitled to the same ; but that if he was, they submitted to be examined upon interrogatories.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides ; and reading a grant from *Queen Elizabeth* to *J. Harpur*, dated the seventeenth of *July*, in the forty-first year of her reign, of the said rectory and parsonage of *Alstonfield*, with the appurtenances ; several proofs in the cause ; and upon full debate of the matter ;

THE COURT ordered the defendants to account with the plaintiff for the values of the tithes of the several matters and things which they had arising, growing, or renewing on the several lands by them respectively occupied in *Over Elkstone*, otherwise *Upper Elkstone*, aforesaid, and the titheable places thereof, during the time demanded by the bill, together with costs to be taxed.

The deputy made his report, dated the sixteenth of *March 1752* ; and on the twenty-fifth of *April* the said report was ratified and confirmed.

T. PARKER.
E. CLIVE.
H. LEGGE.
S. S. SMYTHE.

HILARY TERM
24. GEO. 2.

HATFIELD against RAWLING.

Hertfordshire, 25th February 1750.

The impropria-
tor of the parish
of *Lilley*, in
Hertfordshire,
claims the great and small tithes of the parish ;

THE bill stated, that the plaintiff, as rector of *Lilley*, in the county of *Hertford*, had been, for twenty-eight years last past, seised, in his demesne as of fee, of the said rectory, with all the

demesne

demefne lands, glebe lands, tithes, oblations, and profits thereto appertaining, and was entitled to receive all tithes, both great and small, arising therein; that the parishes of *Lilley* and *Offley* being contiguous, and several inclosures having, many years since, been made in the said parishes, divers parcels of land in *Lilley* had, in different places, been inclosed with other lands in *Offley* in one and the same inclosure; and that by means thereof, the boundaries of the said parishes had, by length of time and unity of possession, been lost, forgotten, and destroyed; that there were divers other parcels of land in the common fields of *Lilley*, one part of which were, and time immemorial had been, reputed to be in the parish of *Lilley*, and the other part in the parish of *Offley*; that one moiety of all such pieces and parcels of land had, for many years past, paid tithe in kind, or certain sums of money in lieu thereof, to the rector of *Lilley*, and the other moiety to the persons entitled to the tithes of *Offley*, according to the custom of tithing therein; that two acres of glebe land, belonging to the rector of *Lilley*, had been, many years ago, inclosed with a parcel of ground, called *Long Hedges*, the tithes of which had been paid for several years to the plaintiff by *Sir G. Warburton*, the owner of the greater part of the said *Long Hedges*; that *Sir G. Warburton* occupied the said two acres in unity of possession with his own lands at fourteen shillings a year until the year 1730; that he then sold his estate to *C. Cavendish*, who paid the plaintiff the rent of ten shillings an acre yearly until the year 1738; that *C. Cavendish* sold the same to the defendant; and that the defendant had not paid any rent to the plaintiff for the same, but had positively refused so to do. The bill then set forth, that the several pieces of land therein mentioned lay inclosed in several inclosures, part in *Lilley* and part in *Offley*; that they had, for many years, paid tithes in kind, according to the quantity of acres reputed to be in each parish; that the defendant *Wallis*, tenant to the defendant *Rawling*, had several titheable matters and things arising in the said parish of *Lilley*, particularly the pasturage of barren and unprofitable cattle, and sheep which had lambed in *Lilley*, and been shorn in the parish of *Offley*; and prayed, that the defendant *Wallis* might account for the tithes in arrear, and the rent for the two acres of glebe land; and that the defendant *Rawling* might be restrained from proceeding at law against the plaintiff for what he might pretend should be due from the plaintiff to him, as mentioned in the said bill.

The plaintiff amended his bill by striking out the defendant *Wallis*, who had absconded, and become a bankrupt; and filed a supplemental bill, charging, that *Rawling*, at *Michaelmas* 1748, had entered upon all the lands late in the occupation of *Wallis*, and had ever since been, and then was in the occupation thereof, as well as of the other lands; and, after

HATFIELD
against
RAWLING.

and states, that upon inclosing the open lands of *Lilley*, and the adjoining parish of *Offley*, lands belonging to each parish were included in the same inclosures; that the tithes of the lands belonging to each parish have been respectively paid;

that two acres of glebe of *Lilley* were inclosed with land in *Offley*, called *Long Hedges*;

and that the defendant *Rawling* and his tenant *Wallis* held lands in *Lilley*.

The plaintiff strikes out *Wallis* from the bill, and files a supplemental bill against *Rawling*,

HATFIELD
against
RAWLING.

praying, that
Rawling may
pay the arrears;
and that his
right to the tithes may be established.

stating the several titheable matters he had thereon, prayed, that he might have the benefit of all and singular the matters aforesaid; and that his right to the tithes of all the several pieces or parcels of land in the said bill mentioned may be established; and the defendant be decreed to account and pay for his tithes.

Rawling states the several lands which he holds in the parish of *Lilley* and elsewhere; and admits the plaintiff's title to some part of the tithes, but denies it as to others.

The defendant *Rawling* said, that he was lord of the manor of *Lilley*, otherwise *Lindley*, and of the manors of *Putteridge* and *Huckwellbury*, in the county of *Hertford*; that the said manors lie together in the parishes of *Lilley* and *Offley*, in *Hertfordshire*, and in the parishes of *Stopsley* and *Lutton*, in *Bedfordshire*; that he was also owner of a capital messuage or mansion-house, called *Putteridge*, with the appurtenances, in the parish of *Offley*, and of a considerable estate in *Lilley*, *Offley*, *Huckwellbury*, *Stopsley*, and *Lutton* aforesaid; that he purchased the manors, with the greater part of his estate, about ten years since, to him and his heirs, of *Lord Charles Cavendish*; that the said estates formerly belonged to *Thomas Doccera*, deceased, and afterwards to *Sir George Warburton*, deceased, as the heir of the said *Thomas Doccera*; that he was likewise owner of the tithes of all kind of corn and grain arising out of and upon all those arable lands belonging to the manors of *Putteridge* and *Huckwellbury*, lying in the parish of *Offley*, formerly in the occupation of the said *Doccera* (except the tithes of certain arable lands and leys dispersed in the common fields of *Lilley* and *Offley* aforesaid); and he set forth the quantities, qualities, and values of his lands, and the titheable matters he had thereon. He admitted that the plaintiff was entitled to receive some part of the said tithes, which he said he was willing to pay, but not the other part; and he set forth the reasons in his answer why he did not pay the same.

The cause
heard.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for both parties;

The defendant
says, that the vicar of *Offley*
ought to have
been a party;
but over-ruled.

The defendant's counsel objected to the plaintiff's proceeding in the cause, for want of the vicar of the parish of *Offley* being made a party thereto; but THE COURT, on hearing the plaintiff's counsel in answer, over-ruled the objection.

The evidence
read.

And upon reading the answers, and several proofs in the cause; a paper book (marked B.) entitled "A true Copy of an ancient Field Book belonging to the Town of *Lilley*;" several receipts given by the plaintiff to *Lord C. Cavendish*; a particular of *Putteridge* estate 1735; a letter for paying the plaintiff eight pounds, nineteen shillings; a terrier, produced by the defendant, dated the fifteenth of *April* 1708, of the lands, tithes, &c. belonging

belonging to *Lilley*, signed by *J. Banks*, the then rector, and others; and upon hearing what could be alledged by counsel;

HATFIELD
against
RAWLING.

THE COURT ordered the supplemental bill as to the praying an establishment of the plaintiff's right to the tithes in question, and so much of the original and supplemental bills as related to the demand of tithes of milk, calves, pease, vetches, turnips, and of the eight pounds, nineteen shillings on the note from *Ralph How*, to be dismissed, with taxed costs in respect thereof; and the defendant to account for the tithe of wood, and all other the great and small tithes demanded by the said bills in respect of all the lands in his occupation, alledged by the said bills to lie in the parish of *Lilley*; and also for the two acres of glebe land in *Long Hedges*, after the rate of ten shillings an acre by the year, and to pay costs to this time with respect to the several matters for which he is hereby directed to account. Further directions to be reserved till after the report.

The bills dismissed, so far as they relate to the tithes of milk, calves, pease, &c. and the establishment of the plaintiff's right; and the other tithes ordered to be accounted for, particularly the tithe hay of the glebe land.

GARDINER against COX.
Oxfordshire, 21st November 1751.

MICH. TERM,
25. GEO. 2.

THE plaintiffs, on behalf of themselves and all the owners and occupiers of lands in that part of the parish of *Adderbury*, in the county of *Oxford*, called *Adderbury East*, stated, that the parish of *Adderbury* consisted of the town of *Adderbury*, and the vills and chapelries of *Bodicot*, *Milton*, and *Bardford* (a); and that the town of *Adderbury* was divided into two hamlets or distinct tithings, called *Adderbury East* and *Adderbury West*;

The farmers of lands in the township of *Adderbury East*, in *Oxfordshire*, insist on certain modules

See *Somerville v. Wife*, ante, 263.

(a) In Trinity Term, 3. Geo. 2. *Somerville*, the former vicar of *Adderbury*, filed his bill in this court against *Watson*, a landholder in the chapelry of *Bardford*, for an account of tithes therein. The defendant insisted, that the vicar was not entitled to all the tithes of the chapelry, or to any thing in lieu thereof; and claimed a right to a third part of the tithes belonging to ten yard lands, seven lands, and two acres in *Bardford*, which, he said, were formerly parcel of the possessions of the priory of *Gbascombe*, and had been vested, with the tithes thereof, at the dissolution of the priory by the 31. Hen. 8. c. 13. in the crown, and had come to him by mesne conveyances from its original grantee. He also insisted, that no tithes were due for a parcel of land called *Baker's Leys*; that certain compositions were payable for the *Honeyham* and the *Ford*; that no tithes were due for the aftermath of *New Close*; that the vicar enjoyed two acres in the *Chief Meadow*, in lieu of all the tithes thereof; and that the former owners of the third part of the tithes of the ten yard lands,

seven lands, and two acres, used to retain the whole tithes of a meadow called the *Ham*, in lieu of the third part of the tithes of the ten yard lands and seven lands; but that it had been agreed between him and the vicar, that the vicar should take two-thirds of the tithes of the *Ham*, and that he should have one-third of the tithe hay in the *Open Fields*. THE COURT, on reading the endowment of the vicarage, dated the ninth of July 1381; a confirmation thereof dated the twentieth of October 1397; another confirmation by the Bishop of Lincoln, the twenty-third of January 1397; a statute made 16 & 17. Car. 1.; two deeds of the twenty-seventh of May and the ninth of November 1658; a chirograph of a fine passed in the tenth year of *Queen Anne*; and the depositions in the cause, ordered the defendant to account for the tithes of *Baker's Leys*, *Honeyham's*, the *Ford*, the *Chief Meadow*, the *Ham*, and the *New Close*; and dismissed the bill, so far as it related to the setting aside the defendant's said portion of tithes.

that

GARDNER
against
Cox.

in lieu of
the tithe hay of
the Lot Mea-
dows;

of the tithes of
milk and calves;

of barren cows;

of garden stuff;

of colts;

and of wool and
lambs.

that in *Adderbury East* there were certain ancient uninclosed arable fields belonging to different owners, and certain ancient meadows, called *Lot Meadows*; that by an ancient custom, for time immemorial used and observed in the said hamlet, the *Lot Meadows* were yearly set out and allotted to the several occupiers of arable lands in the said common fields, according to the quantity of land by them respectively occupied there, to be occupied by them in severalty; and that by an ancient custom, for time immemorial used and observed within the said hamlet, every occupier of land in the said *Lot Meadows* (except the *Demesne Lands* of the *Bishop of Winchester*) had yearly and every year, on the feast-day of *Saint Michael*, or as soon after as lawfully demanded, paid to the vicar a *modus* of sixpence by the yard land for every yard land of the said *Lot Meadows*, each yard land containing four mens math for a day, and so in proportion for a greater or less quantity than a yard land, after the rate of one penny halfpenny for each man's math by them respectively occupied for and in lieu of the tithe of hay arising therefrom and depasturage thereof; that by the like custom, a *modus* of three halfpence was payable for every milch cow kept and depastured therein, in lieu of the tithes of calves and milk; also a *modus* of one penny for every barren cow, for and in lieu of the tithe of the depasturage thereof; a *modus* of one penny for every garden, in lieu of the tithes of all titheable matters arising therefrom; a *modus* of one penny for every colf dropped in the said hamlet, for and in lieu of the tithe thereof; that by a like ancient custom, every person depasturing any number of sheep under seven in the said hamlet, had paid yearly to the vicar a *modus* of one penny for every sheep, for and in lieu, &c. of the tithes of wool and lamb arising from or yeaned by such sheep; that the tithes of wool and lamb, or some ancient *modus* payable for the same, belong to the impropiator of the said parish, where the number of sheep are above six, and not exceeding ten, and never did belong to the vicar thereof; that where the number of sheep so depastured are above ten, the like rule of tithing had been time out of mind observed. The bill therefore prayed, that the defendant might answer the premises; that an issue at law might be directed to try the validity of the several *moduses*, if the same were not admitted; and that the same might be established by the decree of this court.

The vicar denies
the existence of
any *moduses* in
the said town-
ship; and insists
on tithes in
kind.

The defendant admitted, that by an ancient custom used in the said hamlet, the *Lot Meadows* were yearly allotted to occupiers of arable lands in the *Common Fields*, according to the quantity of land by them occupied; but denied that there was in *Adderbury East* any such *moduses* or any other *moduses*; and he set forth his endowment in his answer.

THE

THE COURT, upon hearing counsel on both sides, and reading several proofs, and upon full debate, ordered the bill, as to the *modus*es in lieu of the tithes of wool and lamb, to be dismissed with costs; the validity of the other *modus*es to be tried at law by a special jury; and further directions to be reserved till after the trial.

GARDINER
against
Cox.

The bill dismissed as to the *modus*es in lieu of wool and lambs; and the other *modus*es ordered to be tried at law.

SMITH against HUGGINS.

Hampshire, 25th June 1752.

TRIN. TERM,
26. GEO. 2.

THE vicar of *Alton*, with the chapelries of *Haliburn*, *Benstead*, and *Kingsey*, in the county of *Hants*, annexed, claimed all the small tithes arising therein, particularly the tithes of hops, the depasturing of barren and unprofitable cattle, and milch cows.

The vicar of *Alton*, in *Hampshire*, with the chapelries of *Haliburn*, *Benstead*, and *Kingsey* annexed, claims the tithes of milch cows.

tithes of hops, of depasturing barren cattle, and

The defendant said, that his hops had been gathered, not in any garden, but from arable and meadow ground; and that the tithes thereof had always been paid to the impropiator. He also said, that he had depastured on his lands barren and unprofitable cattle, and milch cows, from which he had milk, but that he had not paid to the plaintiff any tithes in kind for the said hops, barren cattle, or milk, or made him any satisfaction for the same, because he had rented of the lessee of the dean and chapter of *Winchester*, the impropiators of the said rectories and chapelries, all the tithes of his said lands; and he insisted, that if the plaintiff claimed the same, he ought to have made the lessees and the impropiators parties to his bill. He also said, that his milch cows were fed on his pastures in *Kingsey*, but always milked in the parish of *Headley*; to the rector of which parish he had always paid his tithe milk.

The defendant says, that his hops were gathered from fields, and that the tithes therefore belong to the impropiator; that he rented all the tithes of his lands from the impropiator, who should have been made a party to the bill; that his cows, though fed in the rector there.

Kingsey, were milked in *Headley*, and the tithe paid to

The plaintiff, by an order made the twenty-seventh of *October* 1749, amended his bill, and thereby stated, that he, as vicar as aforesaid, was, by ancient endowment, usage, or otherwise, entitled to all small tithes, except the tithes of apples, lambs, wool, mills, and pannage, arising within the chapelries of *Benstead* and *Kingsey*.

The vicar, by an amended bill, insists on all small tithes, except of apples, lambs, wool, mills, and pannage, in *Benstead* and *Kingsey*.

The defendant, by his answer, said, that he knew not that the plaintiff was, by endowment, entitled to the tithes of the said chapelries, and that he had paid the same by agreement to the lessee of the impropiators.

The defendant denies the vicar's right to the tithes.

The

SMITH
against

HUGGINS.

The objection,
that the impro-
priator and his
lessees ought to
have been par-
ties, overruled.

The evidence
read.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides.

The defendants counsel objected, that the impropriators of the parish, or their lessee or lessees, ought to have been made parties thereto ; which objection, on hearing the plaintiff's counsel, was overruled.

And upon hearing counsel, and reading an ancient book from the registry of the *Bishop of Winchester*, folio 172, relating to the vicarage of *Alton*, and the chapelries thereunto belonging ; several depositions and receipts for small tithes arising within the chapelry of *Kingsey*, and particularly for hops ; and on long debate of the matter ;

The tithes, ex-
cept those waiv-
ed, decreed with
costs.

THE COURT was of opinion, that the plaintiff was entitled to all the small tithes in the said vicarage of *Alton*, and the chapelries of *Haliburn*, *Benslead*, and *Kingsey*, except the tithes of apples, lambs, wool, mills, and pannage, arising in the said chapelries of *Benslead* and *Kingsey* ; and ordered the defendant to account for the values of the tithes of his hops, milk, and depasturage on the lands in the said vicarage and chapelries thereunto belonging, with costs.

The deputy made his report, dated the tenth instant ; and on the twentieth of *February* 1753, the said report was ratified and confirmed with subsequent costs, and the defendant ordered to pay one hundred and eleven pounds, reported due for his tithes and costs.

B. LEGGE.

B. SMYTHE.

B. ADAMS.

TRIN. TERM,
26. GEO. 2.

HILTON against HEATH.

Wiltshire, 26th June 1752.

The impropria-
tor of *Lyneham*,
in *Wiltshire*, files
his bill for a dis-
covery, an account, and payment of tithes.—See ante, 444. 447.

THE impropriator of *Lyneham* claimed all tithes in the villages of *Lyneham*, *Bradstock*, and *Clack* ; and prayed an account for the same.

The defendant
answers by pro-
testation as to
the prayer of
discovery and
account ;

The defendant put in his plea and answer, and by protestation, not acknowledging or confessing, &c. as to so much of the bill as prayed a discovery of the several titheable matters and things, or any of them, which had grown or arisen on the lands and premises within the parish or impropriate rectory of *Lyneham*, or the titheable places thereof, at any time before and unto *Michaelmas* 1747, or the quantities, qualities, or values thereof, or any account or satisfaction for the same, or any part thereof,

thereof, did plead thereto; AND FOR PLEA SAID, that one *J. Hulbert* being employed and duly empowered by one *Mary Walker*, then reputed owner and impropriatrix of the said rectory of *Lyneham*, and the tithes thereto belonging, as her agent or servant, to collect and receive for her use the tithes and dues arising from the said rectory, and to let the same, and receive the rents and compositions due for the same, he, the defendant, about the seventeenth of *June 1736*, did enter into an agreement with the said *Hulbert* in writing, to pay annually seven pounds, ten shillings, for his tithes of corn and grass, together with the small and privy tithes; that he, the defendant, renewed the said agreement with *Hulbert* who acted as the plaintiff's agent when he came into possession thereof; and that he had duly paid for all his said tithes according to that composition, and had continued to go on so yearly, at the rate of eight pounds a-year for the same; and therefore he pleaded the said agreement; and he set forth the lands he occupied, and the titheable matters that arose thereon; and insisted, that he ought not to pay them in kind, the said plaintiff not having given him due notice that he would no longer abide by the said agreement; and he tendered the four pounds, the half-yearly payment then due, which the said *Hulbert* refused to accept, declaring that he would not abide by the said composition.

The plea was argued, and ordered to stand for an answer, but without liberty to the plaintiff to take exceptions to the same.

The plaintiff replied to the plea and answer; the defendant rejoined; and witnesses were examined on both sides.

THE COURT, upon hearing counsel, and reading the several proofs in the cause, and the several agreements and receipts for *J. Hulbert*, particularly mentioned and insisted on in the plea and answer, ordered the bill, as against the defendant *Heath*, to be dismissed with costs.

E. CLIVE.
S. S. SMYTHE.

SNEYD against UNWIN.

Essex, 9th June 1752.

THE rector of *Henningham Sible*, in the county of *Essex*, stated, that the defendant was, at *Lady Day 1749*, in possession of *Broom Leys*, which then was, and for several years past had been planted with hops; that he, the plaintiff, hoped he would, in proper form and manner, as by law he ought, have plucked his hops from the stalks and binds, and have set out the tithe thereof by weight or measure after they were so plucked; and

HILTON
against
HEATH.

and for plea says, that he agreed for his tithes with the agent of the former and present impropriator at 8l. a-year, and that the plaintiff had not given notice to determine the said agreement;

and, setting forth an account, tenders 4l. for the last half-year;

which the plaintiff refuses to accept.

The plaintiff ordered to answer the plea without exceptions.

The cause heard.

The bill dismissed.

TRIN. TERM,
26. GEO. 2.

Hops ought to be picked and gathered from the binds or stalks, and then the tithes thereof set out by measure.

See ante, 404.

SNEYD
against
UNWIN.

he set forth the case of the defendant's late father (a), and prayed an account and satisfaction for the said tithes.

The defendant answered to the same effect as to the custom of tithing of hops as his father had done in the former cause.

THE COURT, upon hearing counsel, and reading the proofs in the cause, declared, that the method of tithing of hops insisted on by the defendant in his answer, is not the legal method of tithing of hops; but that they ought to be picked and gathered from the binds or stalks before the same are titheable; and ordered the defendant to account for his tithe of hops, with costs.

(a) See Sneyd v. Unwin, ante, page 409.

MICH. TERM,
26. GEO. 2.

MORDEN *against* KNIGHT.

Norfolk, 27th November 1752.

Faggot wood
and billets made
of topwood cut
from trees of a-
bove twenty
years growth
before they were
made pollards;
are not titheable.

THE rector of the parishes of *Cantley* and *Southwood*, in the county of *Norfolk*, claimed the tithes of top-wood cut from pollard trees not being timber, and made into faggot wood and billets.

The defendant said, that he was possessed of a farm and lands in the said parishes, and had cut and lopped several oak and timber trees, part whereof he burnt in his family, and sold the rest; that he did not set out the tithes thereof in kind, or make any satisfaction for the same, because the trees from which the said wood was cut were large trees, and used as timber in the said county, and were all of them at least above the growth of twenty-five years.

THE COURT was of opinion, "that the said billets and faggots were exempt from the payment of tithes, for that the same were cut from trees of above the growth of twenty years before they were made pollards;" and therefore dismissed the bill, without costs.

MICH. TERM,
26. GEO. 2.

JENNINGS *against* LETTIS.

Hertfordshire, 11th December 1752.

The impropria-
tor of *Barkway*,
in *Hertfordshire*,
claims the tithes
of certain lands
lying in the o-
pen fields, and
formerly part of
Royston Heath.

THE bill stated, that the plaintiff, for five years past, had been the owner and impropriator of the parish-church of *Barkway*, in the county of *Hertford*, and was entitled to the tithes of corn, grain, and other great and predial tithes in kind, arising therein; that the defendant *Lettis* then was occupier of certain arable lands therein, situate in an open field adjoining to a road leading from *Royston Foulmore*, and so describes the boundaries of the field; that the said lands, or great part thereof, were,

were, till thirteen years ago, heath ground, and part of *Roylson Heath*, which was used by the owners of lands, or their tenants, for the depasturing of sheep; that for thirteen years last past, and particularly for five years past, the said arable lands had been sown with wheat, barley, oats, rye, hemp, beans and other grain, the tenth part whereof was due to the plaintiff as owner and impropiator of the said rectory, but which the defendant had refused to set out or pay, or make him any satisfaction for. The bill therefore prayed, that *Lettis* might set forth the quantities and values of the said tithes, and account for the same; and that the defendant *Hurrell* might set forth the claim, right, or interest he had, if any, to the said tithes.

JENNINGS
against
LETTIS.

The defendant *Lettis* admitted, that the plaintiff was owner and impropiator of the greater part of the rectory; and said, that in the year 1728 his father, during his life-time, had rented of *R. Chester* a farm, of which eighty-eight acres were arable land, laying in *Barkway Field*, and one hundred and thirteen acres of arable and thirty-two acres of heath ground lay in the *Open Field*; that he also rented of *R. Chester* twenty-six acres more of arable land, of which nineteen acres and a half lay also in *Barkway Field*, and the other six and a half in the field mentioned in the bill; that he, the defendant, had held the same since his father's death; that the one hundred and seven acres and a half in *Barkway Field* are in the parish of *Barkway*; that the one hundred and nineteen acres and a half of arable, and the thirty-two acres and a half of heath land adjoining thereto, are in the parish of *Roylson*, and that the rest of the said lands so held by him are in the parishes of *Reed*, *Thorfield*, *Melborne*, and *Neesworth*; that he had constantly either set out or made satisfaction for the tithes of the one hundred and seven acres and a half in the parish of *Barkway* to the plaintiff, or to those claiming under him; and therefore he conceived, that no discovery or payment of any tithes was sought by the present bill for any of those lands; that the one hundred and nineteen acres and a half of arable land, and the thirty-two acres of heath, are, he believed, by some means discharged from the payment of tithes, for that they have many years, since the tithes were made lay fees, about two hundred years ago, been granted to the owners of the said lands by the impropiators of the rectory, and that no tithes had been paid for the same in the memory of man to the impropiators of *Barkway*; that although the original means or foundation of such discharge or grant might be lost by length of time, yet as a composition in lands, or other satisfaction, might have been given to the rector before the dissolution of monasteries, or the said tithes might have been alienated for a valuable consideration by those under whom the plaintiff claimed, the constant uninterrupted non-payment thereof to the impropiators of the rectory, and the

The defendant *Lettis* says, that he occupies one parcel of arable land of 119½ acres, and another parcel of heath land of 32 acres; that the said land lays in the parish of *Roylson*;

that they never have, in the memory of man, paid any tithes to the impropiator of *Barkway*;

and that such uninterrupted non payment is presumptive evidence that the said lands are discharged from the payment of tithes;

JENNINGS
against
LETTIS.

that the rectory
was purchased
without paying
any value for the
tithe of the said
lands ;

that the owners
thereof have
been lords of the
manor of *Roy-
ston* ; and that
it ought to be
presumed that
the tithes were
granted to
them.

The lessee of the
tithes of *Royston*
waives all right
to the tithes
claimed by the
bill.

The cause
heard.

receipts given by the occupiers of the lands as far as the memory of man could go back, would be evidence of such discharge or alienation ; and therefore he insisted, that the plaintiff was not, as impropiator of part of the parish of *Barkway*, to have any tithes for the said lands, especially as his father had taken the said lands as free, and exempted from the payment of tithes to the impropiator, and had on that account paid an extraordinary rent for the same. The defendant further said, that he believed that so much of the said rectory as the former owner thereof was entitled to, had been purchased by the plaintiff's father ; and that at the time of such purchase, the vendor, or those under whom he claimed, had sold the same freed and discharged of the said tithes, and of course had not paid any value for the same. He also said, that no demand had ever been made for tithes of the said lands within the memory of man, except by the plaintiff ; and he insisted, that after so great length of time it ought to be presumed that the lands were exempt from the payment of tithes by some grant thereof, especially as the landlord thereof was then lord of the manor of *Royston*, and those under whom he claimed had been so for many years, and entitled to the tithes of the lands within the said manor, of which the aforesaid acres were parcel, and had for many generations belonged to the family of the *Chesters*, and been conveyed by fines and deeds by *E. Chester* the then landlord ; and he insisted on those settlements, fines, and non claims as a bar to preclude the plaintiff of his pretended right to the said tithes ; and averred, that he held no other lands in the parish of *Barkway*, except as aforesaid. The defendant further said, as to the one hundred and nineteen acres and a half and the thirty-two acres ; that the same, ever since the plaintiff had been impropiator of *Barkway*, had been sown with wheat, rye, barley, oats, pease, tares, and lintells, and sometimes laid down for grass ; that in each of the said years he had kept, cut, gathered, and carried all the said titheable matters growing thereon, without setting out the tithes, or making any satisfaction for the same.

The defendant *Hurrell* said, that the plaintiff was impropiator of the said parish, and thereby entitled to the tithes of corn and other great and predial tithes therein ; that his father had purchased the rectory of *E. Chester, Esq.* about the year 1740, when he, the said defendant, rented great part of the tithes of the said *Chester*, and afterwards of the plaintiff and his father ; that he claimed no title to the tithes which the plaintiff demanded of the defendant *Lettis*, or to any thing in lieu thereof ; and that the lands in the occupation of *Lettis*, whereof the plaintiff claimed tithes, were in the parish of *Barkway*.

The plaintiff replied to the answer of *Lettis* ; the defendant rejoined ; and witnesses were examined on both sides ; and upon

upon hearing counsel on both sides for several days ; and reading a copy of an act of parliament made in the thirty-second year of *Henry the Eighth* ; several indentures and recoveries, leases and releases, from 1659 to the *Chester* family ;

JENNINGS
against
LETTIS.

The defendant's counsel objected, that *E. Chester*, the lessor of *Lettis*, ought to have been made a party to the suit ; but upon hearing the plaintiff's counsel thereon, the objection was overruled, and

The objection, that the owner of the land ought to have been a party, overruled.

THE COURT, upon long debate of the matter, offered the counsel for *Lettis* an issue to try, whether the lands in question were within the parish of *Barkway*, or the titheable places thereof, in the thirty-second year of *Henry the Eighth*, when the act of parliament passed for erecting the town of *Roydon* into a parish ; but the defendant declining to accept the offer ;

The Court offer an issue to try, whether the lands were in *Barkway* when the town of *Roydon* was made a parish ; but the defendant declining it,

THE COURT ordered *Lettis* to account with the plaintiff for the tithes of all and singular the titheable matters arising on the lands in the pleadings mentioned, and demanded by the bill, with costs of suit to be taxed ; and the bill to be dismissed as against *Hurrell*, with forty shillings costs.

the Court order the tithes to be paid with costs.

RICE against BENSLEY.

Norfolk, 14th December 1752.

MICH. TERM,
26. GEO. 2.

THE bill stated, that in *December 1743* the plaintiff was duly instituted and inducted into the rectory of *Foulsham*, in the county of *Norfolk* ; that the occupiers of lands therein, at his first becoming rector thereof, pretended that tithes were not due in kind, but that time out of mind there had been payable, in lieu thereof, the several ancient compositions stated in the bill ; that he had accepted of the said compositions for some time, till finding that he was imposed upon, and that there were no such compositions as the occupiers of land had pretended, he, on the first of *August 1747*, gave public notice, that he would not accept of the same any longer, but take, for the future, his tithes in kind ; that the said notice was well known in the parish ; but that the occupiers, disregarding the same, had refused to pay their tithes in kind, and insisted on paying the said compositions in lieu thereof ; that he thereupon filed his bill in this court for the recovery of the same ; that the defendants thereto put in their answers, and therein insisted on the said several pretended compositions ; but on the hearing of the cause, the said compositions were declared void, and the defendants decreed to account (a). The bill then stated, that the

The rector of *Foulsham*, in *Norfolk*, claims tithes in kind.

(a) See *Rice v. Manning*, ante, page 466.

RICE
against
BENSLEY.

defendants had been, for several years, occupiers of lands in the parish, upon which, and on the commons belonging thereto, they had severally many titheable matters and things, the tithes of which they took, and substracted to their own use, without making, except as in the bill is excepted, the plaintiff any satisfaction for the same; and prayed, that they might be decreed to account with and satisfy him for the value of their tithes.

The defendant Bensley says, he holds lands in Foulsham and Woodnorton; that his cattle had been fed indiscriminately in both parishes; but that his cows were always milked in Woodnorton.

The defendants admitted, that the plaintiff was rector of the parish; and the defendants *the Bensleys* said, that ever since *Michaelmas* 1747 they had been joint occupiers of lands lying therein, and in the parish of *Woodnorton* thereto adjoining; and they set forth the numbers of the milch cows, sheep, dry and unprofitable cattle, which they had fed and depastured on their said lands; but that as the said cattle had been indiscriminately fed on the lands in each parish, they could not set forth the values of the tithes of those fed and depastured in the parish of *Foulsham*; but that, they having no house in the said parish, their cows were always milked in the parish of *Woodnorton*.

The defendant Parrant sets out his titheable matters.

The defendant Parrant admitted, that ever since *Michaelmas* 1746 he had been occupier of several lands in *Foulsham*, on which he had, in each year, several titheable matters and things.

The defendants insist, that 2s. an acre for turnips, and 1s. an acre for all pasture land, deducting thereout 2s. for every horse, whenever the tithes of corn and hay are taken in kind, are payable as ancient compositions, in lieu of tithe turnips and pasturage. The cause is heard.

All the defendants insisted, that no tithes in kind for turnips, milk, calves, wool, lambs, or agistment, had ever been paid to the plaintiff, or any of his predecessors rectors of the parish of *Foulsham*; but that for a great number of years past, and beyond the memory of man, the several ancient compositions following had been paid and taken at *Lammas* yearly, or as soon after as demanded, for and in lieu thereof, TO WIT, two shillings an acre for turnips; one shilling an acre for all feeding land, in lieu of the tithes before particularly mentioned, deducting thereout, by the name of *Horse Pasture*, two shillings a-piece for every horse beast kept by the occupiers of lands in the said parish, for tilling their arable land whenever the rectors had taken the tithes of corn, grain, and hay in kind.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the defendant's part; and upon hearing counsel; and reading an order for liberty to read the proceedings in the other cause; and the decree being offered to be read, and objected to by the defendant's counsel; and the objection over-ruled; and on reading the decree; and the defendant's answers;

The bill dismissed as to the tithes of wool, lambs, and milk.

THE COURT ordered the bill as to the demand of wool and lambs from *the Bensleys* to be dismissed, with costs in respect thereof; and likewise as to the demands of tithe milk from them,

them, but without costs; and likewise dismissed as to the demands of the tithes of wool and lambs from *Parrant*, with costs in respect thereof.

Rice
against
BENSLKY.

THE COURT also ordered the *Bensleys* to account for the tithes of the depasturage of the barren, dry, and unprofitable cattle fed and depastured on the lands and grounds by them occupied in the parish of *Foulsham*; for the tithes of turnips pulled and drawn from their said lands; and for the tithes of calves from and since the twenty-ninth of *September* 1747, with costs to be taxed.

The tithes of
calves, turnips,
and depasturing
barren cattle
decreed.

THE COURT also ordered *Parrant* to account for the tithes of dry, barren, and unprofitable cattle fed and depastured on his lands in *Foulsham*; for the tithes of turnips pulled and drawn from his said lands; and for the tithes of milk and calves arising and renewing on his said lands from and since the first of *August* 1747, with costs to be taxed.

WALTON against TYERS.

HILARY TERM
26. GEO. 2.

Surry, 24th February 1753.

THE plaintiff, as rector of *Mickleham*, in the county of *Surry*, and as vicar of *Dorking*, in the said county, claimed the tithes of hops on a hop-ground of ten acres and a half in *Mickleham*, and on another hop-ground of eighteen acres in *Dorking*; and prayed, that the defendant might be compelled to account for the tithe of all the hops which he had grown, gathered, and picked within the said parishes since the twenty-fifth of *March* 1751, and to pay the plaintiff what should appear to be due and owing to him upon such account.

The tithes of
hops cannot be
set out before
the hops are
picked and ga-
thered from the
binds.

S. C. 5. Bro.
P. C. 99.

The defendant admitted the plaintiff's title to the rectory and the vicarage, and said, that for five years past he had occupied two hundred and fifty acres of land in *Mickleham*, and for sixteen years past had been owner and occupier of eighty acres of land in *Dorking* and the titheable places thereof; that he planted *Home Field*, *Chapel Lands*, *Long Winters*, and other acres of land, with hops, in 1747, in *Mickleham*, the same being always before then arable land; that in 1745 he had hops growing, for the first year, on the six acres and a half and seven perches in an open field, part of a farm called *Denbys*, in the parish of *Dorking*, the same being always before arable land after the plaintiff became vicar thereof; that in that year he had offered to pay the plaintiff any reasonable composition for the tithes thereof, but that he insisted on taking the tithes in kind; that he thereupon desired to know how he should set them out; that the plaintiff said, that for

WALTON
against
TYERS.

that year only he should pick all the said hops, and that he would have all the hops measured, and would take every tenth basket, and that the defendant might think himself well off that he did not make him dry the tenth part of the said hops; that the defendant, well knowing that that manner of tithing would spoil the colour, and bruise, and damage the other nine parts of the said hops, and greatly lessen the value thereof for sale, took counsel's advice with respect to the due manner of setting out the tithe of the said hops; that his counsel gave his opinion, "that the tithe was by law to be set out by dividing, separating, and setting out every tenth hill in the hop ground, and by severing the binds of the hop plants in every such tenth hill from the soil;" but that the then impropiatrix of the rectory of *Derking* declaring that the tithe of hops growing in the open grounds in that parish were great tithes, and insisting, that as such she or her lessees were entitled thereto, he, the defendant, did not set out his tithe of the said hops, apprehending that he could only be answerable for the same to such one of them as should be entitled thereto; but that she afterwards not insisting on the same, he offered to make the plaintiff a satisfaction for the same, and suffered him for several years to take his tithe hops in the said parishes for quiet sake by measuring the tenth part of all the hops growing on his said lands after they were picked, and by taking every tenth basket thereof to his own use. He admitted, that in the year 1751 he had hops growing on his aforesaid hop grounds in both the said parishes; and insisted, that he did not gather, pick, carry away, sell, dispose of, or convert the same to his own use, without truly setting out the tithe thereof; that, on the contrary, he divided, separated, set out, and left the full tenth part of all the said hops, by setting out every tenth hill on which the hops grew, and by severing the binds or stems upon every such tenth hill from the ground or soil, and by leaving the said hops upon the binds or stems upon every such tenth hill upon the hop-poles standing thereon, so that the hops growing upon his hop-poles might not be damaged, but might be gathered and carried away by the plaintiff for his own use within a convenient time; that he gave the plaintiff notice that he had divided, separated, set out, and left the said respective tenth parts from the nine parts thereof to his own use for the tithes of the said hops and binds; and that he took and carried away the other nine parts of the said hops growing on his said hop grounds in the year 1751; and he insisted, that that manner of setting out the said tithes was the only method by which the tithe of hops ought to be set out by law. He admitted that the plaintiff had not carried the same away so set out, but had let the same lay and rot on his said land; and that he had brought his action of damages against him: and he insisted, that the tithe of hops ought not by law to be set out after they are picked from the bind or stem but

but in the manner aforesaid. He denied that there was any custom in either of the said parishes for setting out the tithe of hops, but that, for the short space of time that hops had been planted in the parish of *Dorking*, a satisfaction had been usually made to the vicar after the rate of ten shillings an acre, and in many parishes twelve shillings an acre; and that the plaintiff's predecessor had, at his own costs, caused to be picked from the binds or stems the tenth of the hops growing in the said parish of *Mickleham*, or satisfied the occupiers of the hop grounds for the picking of them. He denied that he knew that the tithe of hops had in any instance, when set forth in kind, been set forth in either of the said parishes after the hops were gathered and picked from the binds or stems; and he set forth the quantities and values of the hops he had growed in the said year.

WALTON
against
TYERS.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the depositions of several witnesses; and a receipt signed by the plaintiff the twenty-first of *October* 1745; and upon full debate of the matter;

THE COURT declared, that the method of setting out the tithe of hops insisted on by the defendant in his answer is no good setting out of his tithe of hops; but that hops ought to be picked and gathered from the binds before they are titheable; and therefore ordered the defendant to account for the value of his hops growing on his said lands in the parishes of *Mickleham* and *Dorking* from *Lady Day* 1751, when gathered and picked from the binds; and to satisfy the plaintiff for the tithes thereof accordingly, with his costs of this suit to this time to be taxed; and that an injunction be awarded to stay the defendants said proceedings at law: the consideration of future costs, and all further directions, to be reserved until after the report.

On the seventh of *June* 1753, the plaintiff's counsel informed the Court, that the lords spiritual and temporal in parliament assembled, did, on the seventeenth of *May* last, make the following order, viz. "DIE Jovis, the seventeenth of *May* 1753, after hearing counsel upon the petition and appeal of *J. Tyers* complaining of a decree of the court of exchequer of the twenty-fifth of *February* last, made in a cause wherein *P. Walton*, clerk, was plaintiff, and the appellant defendant, and praying that the same might be reversed, and that the appellant might have such relief as to this house, in their great wisdom, should seem meet; as also upon the answer of the said *P. Walton* put in to the said appeal; and due consideration had of what was offered on either side in this cause; IT IS ORDERED AND ADJUDGED, by the lords spiritual and

WALTON
against
TYERS.

"temporal in parliament assembled, that the petition and
"appeal be, and is hereby dismissed this house; and that the
"said decree, therein complained of, be, and the same is here-
"by affirmed." And prayed the same may be made an order
of the court.

THE COURT, upon reading the said order of the house of
lords, ordered it to be made an order of court.

EASTER TERM
26. GEO 2.

ROBINSON *against* TUNSTALL.

Yorkshire, 21st May 1753.

The rector of *Wycliffe*, in *Yorkshire*,
claims the tithes
of the parish.

The defendant
Tunstall says, that
he had paid all
his tithes to
1744;

that no tithes
are due to the
plaintiff for
lambs yeaned
out of the pa-
rish;

that no tithes
are due for the
wool of sheep
wintered out of
the parish,
though shorn
therein;

that no tithes are
due for sheep
killed for his
own use;

THE rector of *Wycliffe*, in the county of *York*, claimed all
tithes, both great and small, arising in the parish.

The defendant *Tunstall* said, that he had been, for thirty-
seven years past, owner, and in possession of a mansion-house,
where he and his ancestors had, for several years past, resided,
together with an orchard, garden, and arable, meadow, and
pasture-ground; that he had paid a composition to the plaintiff,
in lieu of all the tithes and dues thereof, to the year 1743 in-
clusive; that the plaintiff, at that time, insisted on being ex-
empted from the payment of all taxes and assessments, payable
out of the said rectory; and that, the parishioners thinking the
same unreasonable, and not complying therewith, he then in-
sisted on taking his tithes in kind; that in the year 1744, he had
twenty lambs yeaned in the parish; and had given two to the
plaintiff for the tithes thereof; that he had twenty-seven other
lambs out of the parish, for which he insisted, that no tithes
were payable, as their ewes had been removed a considerable
time before the yeaning time out of the parish, for the conveni-
ence of feeding, and that they were so removed without any fraud
whatsoever; that in the winter of the year 1743, he sent twenty
sheep from the said parish into the parish of *Ravensthorpe*, for
the convenience of fodder; and that they were fed there till
shearing time; that in the year 1746, he sheared eighty-
seven sheep in *Wycliffe*, for which he had paid the plaintiff
six tithe fleeces only, for that twenty-three thereof had been
wintered in the parish of *Barmingham*, and for which he had
paid tithes to the rector there; and he said, that it was the
known rule of tithing in *Wycliffe* and the neighbouring parishes,
that the tithes of wool and lambs are only due to the rector of
that parish where the sheep are wintered, and that no tithes of
either wool or lambs are due to the rector of the parish, where
the lambs are yeaned or the wool shorn, unless the sheep have
been wintered in the parish; and he insisted, that if the tithe
wool of the twenty sheep which had been wintered in *Ravensthorpe*,
and of the twenty-five others wintered in *Barmingham*,
were really due to the plaintiff, the tithes thereof were not
worth more than ten shillings and sixpence. He admitted,
that he had not, since the year 1743, paid the plaintiff any
tithes

tithes of fruit, vegetables, garden-stuff, *Easter* offerings, wool of sheep killed for his own use, foals, poultry, or milk, no such tithes having ever been demanded of him since he had paid the plaintiff a composition for all his tithes whatsoever, to the year 1744. He insisted, that nothing was due for the tithes of milk in 1744, in regard he had paid the tithes of calves in kind, and had kept the calves for the plaintiff until *Michaelmas*, during which time they had consumed more than one tenth part of the milk yielded by his cows. He said, that the tithes of his fruit, vegetables, and garden-stuff, did not exceed in value eight shillings a-year; and he denied, that any tithe was due for the wool of sheep killed for his own family.

ROBINSON
against
TUNSTALL.

that as he had kept the tithe calves for the rector till *Michaelmas*, no tithes are due for milk;

The defendants *the Bailies* said, that they, ever since 1743, had held a farm in *Wycliffe*, from which had yearly arisen several titheable matters; that in 1745, they had twenty-two upsets of barley, which grew upon some head-lands whereon the plough cattle, in ploughing time, turned; and that they concluded that the same were not titheable, but being doubtful, they had ordered the plaintiff's tithe-gatherer to take the tithe of the same out of the barn where it was put, but which he had refused to do.

that no tithes are due for barley which grew on head lands.

All the defendants set forth their titheable matters and values, and tendered the same by their answers, and spoke to the same effect as the other defendants, as to their titheable matters.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel several days, and reading the answers, and the depositions in the cause; and on full debate;

THE COURT ordered *Tunstall* to account for the tithes of the wool, fruit, vegetables, garden stuff, foals, potatoes, and *Easter offerings*, for which he had made a tender by his answer; the defendants *J. and J. Bailies*, to account for the tithes of ducks, foals, eggs, potatoes, and *Easter offerings*; the defendant *Wilkinson* to account for the tithes of potatoes, ducks, turkeys, fruit, vegetables, garden stuff, honey, wax, calves, foals, milk, eggs, agistment of barren and unprofitable cattle, and *Easter offerings*; the defendant *A. Bland* to account for the tithes of potatoes, ducks, eggs, agistment, foals, and *Easter offerings*; the defendant *J. Summers* to account for the tithes of wool, honey, wax, eggs, fruit, calves, milk, foals, and *Easter offerings*; the defendant *W. Pattison* to account for the tithes of wool, potatoes, foals, agistment, *Easter offerings*, eggs, turkeys, ducks, calves, and milk; the defendant *A. Dale* to account for the tithes of calves milk, wool, lambs, foals, apples, potatoes, eggs, and *Easter offerings*; for all which the said defendants had severally made tenders by their answers.

The defendants ordered to account for the tithes of wool, calves, milk, &c.

ROBINSON
against
TUNSTALL

and for the
tithes of the
barley which
grew on the
head lands; for
the wool of the
sheep shorn in
the parish, and
the lambsyeaned
out of the parish.

THE COURT also ordered *Tunstall* to account for agistment tithe and milk; the defendants *J. and J. Bailies* for the tithes of twenty-two upsets of barley, and for the tithes of milk and agistment; the defendant *Blund* for the tithe of milk; the defendants *Summers* and *Dale* for the tithes of agistment; and all the defendants who had sheep shorn and lambs yeaned in another parish and agisted in the parish of *Wycliffe*, to account for the tithes of agisting the same; and for all the titheable matters aforesaid, which they respectively had within the said parish, since the filing the bill: the deputy remembrancer to take the account and to make returns of what was due to the plaintiff at the time of filing his bill, for all the said matters, for which tenders were made.

The bill dismissed,
as to other
tithes.

THE COURT, as to all other matters, dismissed the bill, and ordered the consideration of costs, and all further directions, to be reserved till after the report.

The tithes of
the agistment
of such cattle as
were killed and
eaten in the fam-
ily excepted.

The deputy remembrancer made his report, dated the eighteenth of *January* last; but an exception being taken thereto, because the defendant was charged with the several sums of money therein mentioned, as tithes of agistment for cattle killed for his family's use, and the said exception being allowed, it was referred back to the deputy to review and alter his report, as to the exception accordingly: the deputy made his further report, dated the fifth of *July* instant;

And on the eleventh of *July* 1757, the first report, dated the eighteenth day of *January* last, was ratified and confirmed as to all the several defendants, except the defendant *Tunstall*; and the further report, dated the fifth instant, was ratified and confirmed; and the defendants *Tunstall* and others ordered to pay the plaintiff his costs of suit so far as they related to the several matters, for which the several defendants had, by their answers made tenders, and also his costs of this suit, for the several other matters wherein the plaintiff had prevailed; and that the plaintiff do pay to the defendants their costs of this suit, as to the several matters for which the bill is dismissed by the original order made on the hearing of this cause; the deputy to tax the said costs.

EASTER TERM
26 GEO. 2.

MANCHESTER COLLEGE against ANDREW;
et c. Contra.

Lancashire, 24th May 1753.

The rector of the
parish of *Man-*
chester, in *Lan-*
cashire, is not
entitled to 4d. yearly at *Easter* for every loom used by any manufacturer there, in making and weaving *Manchester* goods.

THE bill stated, that the parish of *Manchester*, in the county of *Lancaster*, is a large extensive parish; that in the town of *Manchester*, part of the said parish, from time whereof the

memory

memory of man is not to the contrary until the fifth of *August* 1421, there had been a parish church for the common use and convenience of all the inhabitants within the said parish, which was under the care and government of a spiritual rector, who had the cure of souls within the same parish, and was legally instituted by the *Bishop of Litchfield and Coventry*, the then bishop and ordinary of the said parish church; that the said rector and his predecessors, rectors there, were and had been, for time immemorial, justly entitled unto and seised of, and had held and enjoyed all great and small tithes, predial, personal, and mixt of what nature or kind soever, and all *Easter* offerings, reckonings, oblations, obventions, mortuaries, rights, dues, and perquisites whatsoever, to the said rectors or parish church belonging or appertaining; that the said parish church was, and had continued to be a parish for all the time aforesaid, and until the same was erected and made A COLLEGIATE CHURCH; that the *Rev. T. Lawarre*, clerk, was rector of the said parish church; that *King Henry the Fifth*, by his charter, dated the twenty-second of *May*, in the ninth year of his reign, reciting, that *Thomas* bishop of *Durham* and others therein mentioned then held the manor of *Manchester*, with the appurtenances, together with the advowson of the said church, to them and their heirs, of the gift and feoffment of the said *Lawarre*, of his special grace and certain knowledge; and that he, for two hundred marks, paid into his hanaper office, did grant and give licence for him and his heirs, to the said bishop and others, that they, or those to whom it did belong, might erect the said church into A COLLEGIATE CHURCH; and that therein there should be a college of one master or keeper, chaplain, and so many fellows, chaplains, and other ministers, as to the said bishop and others therein mentioned, and to the said *Lawarre* should seem convenient, who should say prayers there every day; and that they might found and establish the same, according to the direction of the said bishop and *Lawarre*, or any five, four, or three of them; that the said master or keeper should be called "master or keeper of the college of the blessed *Mary* " of *Manchester*" for ever; and that he, and his fellow chaplains and their successors, should be capable of taking benefices, lands, and other possessions, and have A COMMON SEAL, and might implead and be impleaded by that name; that they might appropriate the said church, and hold the same so appropriated, &c.; that *William*, bishop of *Litchfield and Coventry*, by his deed, charter, or decree, dated the fifth of *August* 1421, reciting, that for the better erecting of the parish church of *Manchester* into A COLLEGIATE CHURCH, and founding a college, all persons necessary concurring, and all things proper being observed, and reciting the licence obtained from *King Henry the Fifth*, he, with the consent of the prior and chapter of *Coventry*, the dean and chapter of *Litchfield*, and the archdeacon of *Chester*

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Chester, and all other necessary parties, being cited at the request of the bishop of *Durham* and others, and by consent of all the parishioners, did decree and erect the said parish church to be A COLLEGIATE CHURCH; and that there should be a college for ever, of one master or keeper, chaplain, and of eight fellows, chaplains, and other ministers there to serve God, who should have the rents, fruits, profits, and obventions to the said church belonging, according to the order and statutes of the said bishop of *Durham* and the said *Lawarre*; that by virtue of the said letters patent, and the bishop's decree, the said parish was erected and made A COLLEGIATE CHURCH, and of the said church, was founded a college consisting of a master or keeper of the college of the blessed *Virgin Mary* of *Manchester*, and eight fellows and their successors; that the said church thereby became appropriated; that the said master and his fellows, chaplains, became legally entitled to, and accordingly held and enjoyed all the great and small tithes, predial, personal, and mixt, and all customary tithes growing, &c. within the said parish, and all customary payments, *modus*, compositions, and agreements, for or in lieu thereof, and all *Easter* offerings, oblations, obventions, dues, rights, and perquisites to the said rectory belonging; that accordingly they and their successors held and enjoyed the same until the time that by an act of parliament, made the first year of *Edward the Sixth*, the said college became dissolved, and the said collegiate church, with all its rights, possessions, and privileges became vested in the said king, whereby he became seised thereof, and of all the great and small tithes, &c. and died so seised and possessed; that after his death the same descended to *Queen Mary*, who became seised thereof, and that being so seised and possessed, *Philip and Mary*, by letters patent, dated the thirteenth of *July*, in the third and fourth year of their reign, did ordain, constitute, declare, and confirm, for themselves their heirs and successors, that the said church should be A COLLEGIATE CHURCH, &c. of the foundation of *Philip and Mary*, king and queen of *England*, and did thereby grant to the said master, &c. for ever, all the tithes of corn and grain annually growing, &c. within the said parish, and all the tithes of lambs, *Easter* offerings, small tithes, oblations, and donations annually arising in *Manchester*, and all other rights, &c. within the said parish of *Manchester*; that by virtue of the said charter the said master, &c. were entitled to, and were seised and possessed of, and held and enjoyed all the great and small tithes, predial, personal, and mixt, and all customary tithes within the said parish and rectory of *Manchester*, and all customary payments, *modus*, prescriptions, and other compositions for or in lieu thereof; that *Queen Elizabeth*, by her letters patent, dated the eighteenth of *July*, in the twentieth year of her reign, (the said college having a very uncertain foundation) for herself,

her

her heirs, and successors, did grant and ordain, that there should be in the town of *Manchester* a college for ever, which should be called *the College of Christ in Manchester*, founded by *Queen Elizabeth*, and it should consist of one warden and four fellows, and did erect the same into a college, and after naming and appointing a warden and four fellows, she incorporated them by the name of the warden and four fellows of *the College of Christ in Manchester*, founded by *Queen Elizabeth*, and thereby granted to them and their successors, all the tithes of grain formerly belonging to the said college, and all profits, mortuaries, and *Easter* offerings, small tithes, oblations, &c. and all rectories, churches, &c. and also all such rights, &c. which belonged to the said late college; that by virtue of the said letters patent, they became legally seised in, &c. of the said rectory of *Manchester*, and of all great and small tithes, &c.; that *King Charles the First*, by his letters patent, dated the second of *October*, in the eleventh year of his reign, did will, grant, and ordain the same as *Queen Elizabeth* did for ever, &c.; that the plaintiffs are rectors of the said parish, and do perform all spiritual functions therein; and that they and their predecessors have and ought to enjoy all tithes of corn and grain, and all other tithes, great and small, predial, personal, and mixt, *Easter* dues, &c. as aforesaid, or something in lieu thereof. The bill then further stated, that timewhereof the memory of man is not to the contrary, every inhabitant of the said parish of *Manchester*, making and weaving, by himself, his servants, and apprentices, any goods or manufactures within the said parish, of what nature or kind soever the same was or were, had usually or accustomedly paid, and of right ought to pay and answer to the rectors of the said parish and parish church, and to the master and keeper of the said college of the Blessed *Mary of Manchester*, and his fellows, &c. the yearly sum of fourpence, at the yearly feast of *Easter*, for every loom employed or made use of by himself, his servants, or apprentices in the making or weaving any goods or manufactures within the said parish, for or as a *modus*, and in lieu and satisfaction of the tithes of the clear gains and profits arising from his and their art and faculty of weaving the same manufactures; and that the same is and hath been a settled and uniform custom within the said town and parish of *Manchester*. The bill then stated the inhabitancy of the defendants, the number of looms used by them, &c. during such inhabitancy, and what remained due to the plaintiffs from them, for the arrears of the said *modus* of fourpence *per annum*, for each loom; and averred, that they had refused to pay the same, and also to pay and answer their small tithes, oblations, obventions, *Easter* dues, and other prescriptions and customary payments. The bill therefore prayed, that the said defendants may pay and answer to the plaintiffs the said *moduses*, or customary yearly sum of fourpence, and all arrears thereof due from the defendants respectively, and all such

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such *Easter* dues, oblations, obventions, and customary payments as shall appear to be due to them; and that the said *modus*, or customary yearly payment of fourpence, may be established according to the custom or usage aforesaid.

The defendants, by their answers, admitted, that the parish of *Manchester* is a large parish; but said, that they knew not, save by the bill, that there was in the town of *Manchester*, for time immemorial until fifth of *August* 1421, a parish church for the use of all the inhabitants within the said parish; and that it was under the care of a spiritual rector, who was entitled to all tithes, &c. or that the said parish church continued to be one for all the time aforesaid, until the same was erected into A COLLEGIATE CHURCH. They admitted, that the said parish church was formerly within and part of the diocese of *Litchfield* and *Coventry*, and as to the charters, decrees, &c. as stated in the bill, they said, that they could not give any account. They also said, that they believed, that the plaintiffs were incorporated by *King Charles the First*, but whether with such grants they knew not, nor whether they are or are not rectors of the said parish; but admit, that they do all spiritual functions therein, and believed, that they and their predecessors have enjoyed all tithes of corn and grain, and all tithes, great and small, predial, personal, and mixt, *Easter* dues, oblations, obventions, customary tithes or other *moduses*, compositions, or customary payments for or in lieu thereof, within the said parish, but under what right they knew not. They said, that they believed, that the plaintiffs and their predecessors had demanded and received the said *modus* of fourpence, as stated in the bill of some of the parishioners, but that the said parishioners had paid it in their own wrong, and they denied that the same is due. They said, that the plaintiffs and their predecessors had, for time immemorial demanded, and have had or ought to have had and received twopence for every person within the said parish above the age of sixteen years; one penny for every housekeeper for smoak; one penny for every garden; one penny for hens; and an halfpenny for wax; and believed that some other *moduses* or compositions, or customary payments had been from time to time and now are claimed by the plaintiffs, in lieu of tithes for cows, barren cattle, sheep, and lambs; and that the defendant *Hurst* had paid twopence a-piece for each barren cow, as a *modus* for each cow. They denied, that the plaintiffs are entitled to a tenth part of the clear gains of every handicraft man arising from his trade, as stated in the bill. They set forth the several years that they had been inhabitants within the parish; the number of looms used by them in each year, and the several sums paid by them for privy tithes; said that they have not paid the said fourpence for every loom; and denied that they refuse to pay any other small tithes, &c. (except what the plaintiffs unjustly claim for looms).

Certain *moduses*
admitted to be
payable in the
parish of *Man-*
chester,

The

The defendants, by their cross bill, prayed, that the warden and fellows might produce all and every the college books, or other books or papers in their custody or power wherein such entries are or have been made, and leave the same to be inspected by the plaintiffs; and that the plaintiffs may follow their respective trades and occupations, without being liable to the payment of such pretended *modus*, or any other yearly charge or payments whatsoever, for or in lieu of the tithes of the clear gains and profits arising from their art or faculty of weaving, or if they shall pretend, that there is any such custom, that a proper issue may be directed to try the same at law.

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ANDREW;
et c. *Contra*.

The defendants put in their answers, and insisted on the said customary payment of fourpence *per annum* payable at *Easter* for every loom employed and made use of by every inhabitant, &c.

In both causes the plaintiffs replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel for all parties; and on reading a charter of *King Henry the Fifth*, dated the twenty-second of *May*, in the ninth year of his reign, to erect the parish church of *Manchester* into a COLLEGIATE CHURCH; a writing signed by the parishioners signifying their consent thereto, dated the fourteenth of *June* 1421, in confirmation of *Henry the Fifth's* charter; an act of parliament, made the sixth year of *Edward the Sixth*, whereby the college was dissolved; a record of letters patent of *Philip and Mary*, inrolled in the office of treasurer remembrancer, dated the thirteenth of *July*, in the third and fourth of their reign, whereby the said college was refounded; letters patent of *Queen Elizabeth*, dated the eighteenth of *July* in the twentieth year of her reign; letters patent, dated the second of *October*, in the eleventh year of *King Charles the First*; and the depositions of several witnesses;

THE COURT, by consent of all parties, ordered an issue to try, before a special jury, "Whether, within the parish of "*Manchester*, there is, and from the time whereof the memory "of man is not to the contrary, hath been, an ancient custom, there "used and approved of, that every inhabitant of the said parish "making and weaving by himself, his servants, or apprentices, "any goods or manufactures within the said parish, hath paid, "and hath used and been accustomed, and of right ought to "pay to the said warden and fellows and their predecessors, "rectors of the said rectory of the parish church of *Manchester* "aforesaid, and proprietors of all and singular the tithes "yearly arising, growing, renewing, and increasing within the "said parish, the yearly sum of fourpence, at the feast of "*Easter* in every year, for and in respect of every loom employ- "ed or made use of by himself, his servants, or apprentices, in "the making or weaving any goods or manufactures within the
" said

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“ said parish, for or as a *modus*, and in lieu and satisfaction of
“ the tithes of his clear gains and profits arising from his and
“ their art and faculty of weaving the same manufactures.”

A trial was accordingly had, and the jury found, that, from time whereof the memory of man is not to the contrary, there was not, nor had been any such ancient custom within the said parish of *Manchester*, therein used and approved of in the same.

The causes came on the eleventh of *July* 1754, upon the equity reserved, and upon hearing counsel, and reading the order, the *posse*, and the return thereon;

THE COURT, by consent of all parties, ordered both the bills to be dismissed without costs, either at law or in equity; and that the defendants in the original cause be at liberty to enter up judgment upon the verdict, the defendants to remit the costs thereupon.

TRIN. TERM,
27. GEO. 2.

WAKELYN against HELLYER.

Essex, 9th *July* 1753.

Tithes are due for both the first and second crops of clover grass, though made into hay from the same lands in the same year.

THE bill stated, that *A. Apgill*, being the impropiator of the rectory of *Walthamstow*, in the county of *Essex*, and as such entitled to the tithes yearly renewing in the said parish, did by indenture, dated the nineteenth of *June* 1749, demise and to farm let, at the yearly rent of one hundred and fifty pounds, all the impropriate tithes of the said parish, and all rents, services, tithes, oblations, obventions, profits, and commodities thereto belonging, and all the impropriate tithes of *Low Hall*, to the plaintiff, to hold from *Michaelmas* 1750; that, by virtue thereof, the plaintiff is entitled, for the residue of the said term, to all the tithes in kind, as they yearly grow, arise, and renew therein; that the defendant was occupier of certain lands in the said parish, whereon, during the year 1752, he sowed fifteen acres of clover, from which he had two large crops of clover-grass, which he mowed and made into hay, and carried the same off the premises, the tithe of which second crop he ought to have rendered to the plaintiff; but that instead of so doing, he pretended that no tithe was by law due for the second crop, though made into hay. The bill therefore prayed, that the defendant might be decreed to account for the tithe of such second crop of clover, and to make the plaintiff a satisfaction for the same.

The defendant said, that the plaintiff was entitled to the tithes of hay, as far as tithes were payable for such hay, or to a recompence for it, viz. to the tithes of a first crop of hay, and not

not to a second from the same lands, in one and the same year. He admitted, that he had been eight years, and then was occupier of lands in the said parish; and that in the year 1752, he had sowed fifteen acres thereof with clover-seed, from which he had two crops of clover-grass, which he had made into hay and carried the same off the premises; and he said, that he had paid the plaintiff the tithe of the first crop thereof, which was large, but not of the second crop, which though made into hay was of little value; and insisted, that it was not customary or usual for lands in the said parish to pay tithe for two crops of grass or hay in the same year; and that it had never before been demanded, for that, as the plaintiff had received tithe of the first crop, he was not entitled to have tithe or satisfaction for the tithe of the second crop; and therefore he had refused to pay the tithe of such second crop, or make any recompence for the same.

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against
HELLYER.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides;

THE COURT ordered the defendant forthwith to pay to the plaintiff the twenty shillings admitted by him, in his answer, to be the value of the tithes of the second crop of clover-grass mowed upon his lands, during the time demanded by the said bill, and her taxed costs.

WILMOT *against* HARPUR.

MICH. TERM,
27. GEO. 2.

Derbyshire, 4th December 1753.

THE bill stated, that the plaintiff in the year 1741, was duly presented, instituted, &c. into the vicarage and parish church of *Mickleover*, in the county of *Derby*; that the town or hamlet of *Littleover*, is within the said parish; that by virtue of some ancient endowment, or otherwise, the plaintiff and his predecessors, vicars had for time immemorial taken and enjoyed, and of right ought to take and enjoy one third part of all the tithe hay arising on the several closes in the bill mentioned, lying in the said hamlet; that for six years past the defendants *Harpur* and others had occupied the several closes in the bill named, and had yearly, for that time, mowed grass growing thereon, and made the same into hay, and carried it away without setting out the tithe thereof; that the plaintiff had frequently applied to the said occupiers for an account of and satisfaction for a third part of the said tithe hay; but that they had refused the same under several pretences in the bill mentioned. The bill therefore prayed, that the defendants might be decreed to account with the plaintiff for the third part of the tithe

The vicar of the parish of *Mickleover*, in *Derbyshire*, claims the third part of the tithe hay arising on certain closes in the hamlet of *Littleover*, in the said parish.

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The landowners deny, that the vicar is entitled to the said portion of tithe hay in *Littleover*;

and say, that the same belong to *Curzon* and *Wilmot* the impropiators,

tithe hay arising on the closes occupied by them, and make him a satisfaction for the same.

The defendant *Harpur* and others admitted, that the hamlet of *Littleover*, was within the parish, but denied, that the plaintiff and his predecessors had, for time immemorial, taken and enjoyed, and of right ought to take and enjoy one third or any other part of all the tithe hay arising and growing on the close in the bill mentioned; and they set forth the several closes they occupied and the quantity of land the closes contained, and the grass they had mowed and made into hay, for the several years they had occupied the same; and said that they had taken the same away, without setting out the tithe thereof, or making the plaintiff any satisfaction for his demand of the said tithe hay; but the defendant *Harpur* said, that there was a yearly *modus* or ancient customary payment, payable to the defendants *Curzon* and *Wilmot* impropiators of the parish, in lieu of the tithe of hay of part of the lands in the bill mentioned; for that he, the defendant *Harper*, on the nineteenth of *November* 1751, paid to them fifty-seven pounds, ten shillings, in full for eight years chief rent and tithe hay, and other things due to them, and for part of the lands in the bill mentioned, and other lands of the said defendant in the said hamlet and parish; and that he believed his ancestors had immemorially paid the said impropiators, or their ancestors, a yearly *modus*, or some ancient customary payment in discharge of tithe hay arising out of part of the said premises. He also said, that he believed, that the tithe of hay was payable to the said impropiators of the other part of the lands in the bill mentioned, and did not believe that, for time immemorial, the plaintiff and his predecessors, or their lessees, had received one third part of the tithe of all or any part of the hay arising on the said closes, or any of them; and that he was not entitled to any share of such tithe. He also said, that he believed that two thirds of the tithes of hay arising from such of the lands in the bill mentioned, as are liable to the payment of tithe hay in kind, were, during the time of *Mr. Ward*, the plaintiff's immediate predecessor, paid to the defendants *Curzon* and *Wilmot*; and that the other third part was paid to *Mr. Ward*, the latter part of his time, but how he became entitled thereto he knew not, but believed, that he had no right to any part thereof; but that, on the contrary two thirds thereof belonged to the defendant *Wilmot*, and the other third to the defendant *Curzon*.

two thirds to *Wilmot*, and one third to *Curzon*;

and that they have received composition in lieu thereof.

The defendant *Pepper* put in the like answer, and said, that he occupied a farm in the said hamlet, and paid the defendants *Curzon* and *Wilmot* the annual sum of one pound, eight shillings, as a composition in discharge of tithe hay and some other small tithes arising out of the said farm; that he occupied several other closes, from which he mowed several quantities of hay, but

but kept no account thereof, the said tithe having never been demanded of him, except by the present bill.

WILMOT
against
HARPUR.

The defendant *Curzon* admitted the plaintiff was vicar, &c. and said, that he claimed one third part of all the tithes of hay arising on the closes in the bill mentioned.

Curzon claims one third of the tithe hay of *Littleover*.

The defendant *Wilmot* said, that by indenture, dated the third of *November*, in the fourth year of *Charles the First*, *Sir G. Fielding, Knight*, granted to *Edward Wilmot*, and his heirs, two parts in three, to be divided, of the advowson of the vicarage of the church and chapels of *Mickleover, Littleover*, and *Findern*, and of the tithes thereof; that the said two third parts of the said tithes, as well as all other the said estate and premises thereby granted, had by descent, settlement, or otherwise become vested, or of right ought to vest in him; and that he believed the other third part belonged to the defendant *Curzon*.

Wilmot claims two thirds of the tithes of *Mickleover, Littleover*, and *Findern*, and says the other third belongs to *Curzon*.

The plaintiff replied; the defendants rejoined; and several witnesses were examined on the plaintiff's part, and on the parts of the defendants the occupiers; and upon hearing counsel; and reading the proofs taken in the cause; and several entries in a book of survey of *Derbyshire*, from the first fruits office, and also in the rolls in that office, relating to the endowment of the vicarage of *Mickleover*; and upon full debate of the matter;

The evidence read.

THE COURT ordered the bill to be dismissed, as against the defendants *Curzon* and *Wilmot*, without costs; and as against the defendant *Shirley*, as to the closes called *Bancraft* and *Little Pingle*, and also as to *Upper Croft*, except for the years 1747, 1748, and 1750 (for twenty years past never mowed), and as to the close called *Pingle*, for the demand of the years 1750 and 1751, (let to under-tenants); and as to *Foxholes*, for the demand of the year 1751, and as to the other *Foxhole*, containing one acre and an half, to be dismissed generally with costs; and also as against the defendant *Tow*, as to the closes called the *Home Close* and *Little Close*, with costs (never mowed); and also as against the defendant *Hodgkinson*, as to *Hall's Close*, with costs (not mowed for twenty years past); and as against the defendant *Wain*, as to *Middle Holbrooke* and *Further Holbrooke* closes, with costs (never having mowed the same); and as against defendant *Pepper*, as to all the lands mentioned to be occupied by him, (except as to the plaintiffs demand for the three years next before filing the bill) with costs.

The bill dismissed, as against the improPRIATORS, with costs; and as against the occupiers, as to the lands stated in the bill which had never been mowed.

THE COURT further ordered the defendant *Harpur* and others, to account to the plaintiff for the value of the third part of the tithe of all hay which they severally had on their respective lands, in the bill mentioned, by them occupied in *Littleover* for 1745, (except the closes called *Marsh Close, Meadow Heades,*

But the third of the tithe hay of certain lands in *Littleover* decreed to the vicar;

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against
HARPUR.

the Homestead, Griff's Close, Townsend Close, and Heath Close, and except the closes, (and as to the years) for which the said bill is dismissed as aforesaid; with costs to this time.

and an issue directed to try his right to the third of the tithe hay of other lands.

THE COURT further ordered the plaintiff and the defendant Harpur to go to a trial at law, upon the following issue, to try, before a special jury, "Whether the plaintiff was entitled to a third part of the tithe hay of the five closes called *Marsh Close, the Homestead, Griff's Close, Townsend Close, and Heath Close,* or any and which of them?"

HILARY TERM
27. GEO. 2.

SMALLEY against DEATH; et à Contra.

Suffolk, 23d February 1754.

The cow keepers in the parish of *Preston St. Mary*, in *Suffolk*, pay on *Lammas Day* yearly 4½d. a milch cow, in lieu of her tithe milk.

THE rector and incumbent of the parish church and vicarage of *Preston St. Mary*, in the county of *Suffolk*, claimed all the great and small tithes therein, and stated, that the defendant *Death*, from the month of *July 1742*, had occupied divers farms within the said parish, and had several titheable matters thereon, particularly fifty acres of meadow or pasture ground on which he had kept and fed divers barren, unprofitable; and other horned cattle, and had great quantities of milk and many calves and other titheable matters; that the defendant *Rummins*, since the year *1746*, had occupied *Preston Hall Farm* in the said parish; that the said farm contained two hundred acres of meadow, arable, and pasture ground; that he had wheat, hay, barley, pease, beans, oats, and other grain growing thereon, the tithes of which were of great value; that he had also occupied another farm, on which he had divers other titheable matters; that about *April 1743*, he, the plaintiff, and the defendant *Death*, came to a composition of nine pounds, ten shillings a-year, for all tithes great and small, except pigs and geese, for three years, from *Michaelmas 1742*; that he had paid the same to the plaintiff to *Michaelmas 1745*; that they had entered into another composition in writing to *Michaelmas 1750*, at eight pounds, fifteen shillings a-year; but that the said defendant had not accounted to him for his horned cattle and his *Easter* offerings since *Michaelmas 1745*; that he and the defendant *Rummins* had also come to an agreement about *May 1748*, for a composition of three pounds a-year, for all the small tithes becoming due on *Hall Farm*, viz. for the tithes of lambs, wool, bees, milch cows, dry cattle, fowls, fruit, gardens, honey, hops, wood, and pigeons, being all his small tithes (except pigs and geese, which were to be paid in kind, as well as corn and hay); that the defendant had paid the said composition to *Michaelmas 1750*; that the said defendant set out and permitted the plaintiff to take the great tithes of the said farm to *Michaelmas 1749*; but that he set out the great tithes, particularly

ticularly of barley, in the year 1750, unfairly, and would not permit the plaintiff to take the same away; that he had not paid his *Easter* offerings for the said farm since *Michaelmas* 1746; that they had satisfied him for the *great tithes* of the other farm, but had not paid him any *small tithes* or his *Easter offerings* for the same; and that he had refused, under various exceptions and pretences, to pay him the said tithes. The bill therefore prayed, that the defendant *Death* might account for the tithes of horned cattle and *Easter* offerings from *Michaelmas* 1745; that he might continue the said composition of eight pounds, fifteen shillings, from *Michaelmas* 1750, for such time as the said agreement should be subsisting; that the defendant *Rummins* might account for the great tithes of *Hall Farm*, since *Michaelmas* 1749; continue the payment of the said three pounds a-year for the small tithes of the said farm from *Michaelmas* 1750; and pay his *Easter* offerings, for the said farm since *Michaelmas* 1746; and make satisfaction for the value of all small tithes, *Easter* offerings, and dues of the other farm from *Michaelmas* 1749; and that the plaintiff's right to tithes in kind for all titheable matters arising in the said parish, and the titheable places thereof, might be established by the decree of this court.

The defendants admitted, that the plaintiff was vicar and incumbent of *Preston St. Mary*, and entitled to all tithes, great and small, arising therein, in kind, except the tithe of milk for which a *modus* was payable.

The defendant *Death* said, that he had, ever since the plaintiff became vicar of the parish, occupied two farms, one whereof contained one hundred and ninety acres, fifty acres of which, together with the farm-house, barns, stables, and out-houses, were in the parish of *Prestbury*; and the other farm wholly in the parish; that he had thereon, since *July* 1742, several titheable matters, the tithes of which, except of milk, would have been due to the plaintiff in kind, if he had not compounded with him for the same; that on the plaintiff's first becoming vicar he agreed to pay him eight pounds, fifteen shillings yearly, as a composition in lieu of all tithes, great and small, which he had duly paid to *Michaelmas* 1747; that in the year 1748, he paid him the said composition, but the plaintiff inserted in the receipt, "in full for every thing but for the tithe of horned cattle which is to be accounted for;" and that he being an illiterate man, did not, at the time, take notice of the same; that by an immemorial custom used in the parish "every occupier of land therein, keeping or depasturing any milch cows, paid the vicar at *Lammas* yearly fourpence half-penny, as a *modus* in lieu of tithe milk yearly arising from each milch cow so depastured and kept within the parish." He set forth the number of calves he had and their values; and averred, that he had no barren or unprofitable cattle in

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any of the last years, except two calves for the pail in each year; and he denied, that he had any other horned cattle in the said years, and set forth his titheable matters particularly.

The defendant *Rummins* said, that at *Michaelmas* 1745, he became occupier of a farm the tithes whereof were of considerable value, and were set out and paid in the manner in his answer mentioned; that he also occupied *Preston Hall Farm*, and that he had duly paid all his tithes, great and small, to *Michaelmas* 1747; that in 1748 and 1749 he had duly set out his tithes of corn and grain, which the plaintiff had carried away; and that for the said years he had compounded for the tithes of hay with the plaintiff at sixteen shillings each year, and which he had also duly paid; and, after setting forth all his titheable matters, he insisted on the *modus* for tithe milk; spoke to the composition of three pounds a-year, as in the bill mentioned; and said, that he had paid the tithe of pigs and geese in kind; and that *Easter* offerings were included in the said composition.

The defendants with others, on behalf of themselves and all other occupiers and owners of lands within the parish of *Preston Saint Mary*, filed their cross bill against *Smalley*, clerk, stating "that by an ancient immemorial custom used and observed within the said parish, every occupier of lands within the same, keeping or depasturing any milch cows within the same parish, had, or ought to have paid to the vicar thereof, his lessee or lessees, for the time being, at *Lammas Day* in every year, or as soon after as lawfully demanded, and that the vicar of the said parish and his lessee or lessees, for the time being, had or ought to have taken and received fourpence halfpenny, as a *modus*, in lieu of tithe milk, yearly arising from each milch cow so kept and depastured within the same parish." That the said ancient *modus* had been constantly and duly paid to the said vicar, &c. till 1742; that the defendant, the present vicar, being presented, &c. into the said vicarage, became thereby not only entitled to the said *modus*, but also to all manner of tithes in kind, both great and small, yearly arising within the said parish, or the titheable places thereof; that soon after his said induction, he entered into an agreement with the plaintiff *Death* to receive eight pounds, fifteen shillings yearly, as a composition, in lieu of all his great and small tithes (including the said *modus*) arising within the said parish, which composition he had paid to *Michaelmas* 1747; that the defendant, in order to destroy the *modus*, and gain his tithes in kind of milk, within the said parish, though he knew no such were due, or had ever been paid, had, without cause, refused to accept thereof, and, to enforce payment of such tithes in kind, had filed his bill herein. The cross bill therefore prayed, that the vicar might answer the premises, and leave with

with his clerk in court all books, papers, writings, deeds, and evidences whatsoever, in his custody or power, relating to the said *modus*; that the plaintiffs might be at liberty to inspect the same, and take copies thereof; that if the said defendant did not admit such *modus*, as before charged, a proper issue might be directed to try the same; and that it might be established by the decree of this court,

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The vicar, by his answer admitted, that in July 1742, he was presented to the said living; but denied the custom for the tithe of milk, as alledged in the cross bill, or that he had entered into any agreement with the plaintiff *Death*, including the said pretended *modus*, or that he had ever allowed any such *modus*. He also admitted, that he had filed his bill to establish his right to tithes in kind; that the plaintiffs had applied to him to accept of the said pretended *modus*, which he had refused; and he said, that he had never had in his custody, or seen, to his knowledge, any ancient deeds, &c. relating to such *modus*; except some receipts produced by the plaintiffs, wherein fourpence halfpenny a cow was mentioned to have been paid to a former vicar; and that he had left in the hands of his clerk in court three terriers of 1706, 1707, and 1715, for the plaintiff's inspection, &c.

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel, and on full debate, the court directed an issue to try the *modus*, as alledged in the cross bill; and ordered that the causes should stand over, as to all other demands, till after the trial.

A trial was accordingly had, and the jury found a verdict for the *modus*.

THE COURT accordingly ordered the original bill to be dismissed, as to the tithe milk in kind, with costs; the said *modus* to be established; and the defendant *Smalley* to pay to the plaintiffs in the cross cause their costs, in respect thereof, both at law and in equity.

THE COURT also ordered *Death* to account for the tithe of the agistment of all calves which he had, and which were not bred for the plough or pail; for the tithe of the agistment of all other unprofitable cattle; for *Easter offerings* from *Michaelmas* 1747, with costs; for the tithe milk according to the *modus*; and for the composition of eight pounds, fifteen shillings a-year from *Michaelmas* 1750, without costs.

THE COURT further ordered *Rummins* to account for the composition of three pounds a-year, for the small tithes of *Hall Farm* (except the tithes of pigs and geese) from *Michaelmas* 1750; for the tithes of pigs and geese in kind, from *Michaelmas* 1750; for *Easter offerings* from *Michaelmas* 1746; for the

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great tithes on *Hall Farm*, from *Michaelmas* 1750; for the small tithes from his other lands from *Michaelmas* 1749; and for the tithe of milk according to the *modus*; but all without costs.

THE COURT further ordered the original bill, as to all other demands, to be dismissed without costs, and the cause to be further heard upon coming in of the master's report.

HILARY TERM
27. GEO. 2.

UMFREVILLE against HICKERINGILL.

Suffolk, 27th February 1754.

The vicar of *Acton*, in *Suffolk*, claims a moiety of the great tithes, all the small tithes of the parish, and all the great and small tithes of *Acton Meadow*, and of five acres in *Warmingfield*.

THE bill stated, that the plaintiff, in the year 1729, was duly presented to the vicarage of *Acton*, in the county of *Suffolk*, and had ever since been lawful vicar thereof, and thereby was entitled to all tithes, oblations, obventions, and offerings of right due to the vicar of the said parish; that by some ancient endowment, or long immemorial usage, the vicars there are entitled to a moiety of all the great tithes yearly arising therein, to all the tithes, both great and small, of *Acton Meadow*, and five acres of arable land in *Warmingfield*, and to all small tithes in the parish and the titheable places thereof; that the defendants insist, that the defendants *Mary*, &c. the five daughters of *John Drew*, are entitled to the impropriate rectory of *Acton*; that they also pretend, that the said rectory contains a moiety of all tithes, both great and small, arising therein; that the said *Drew* purchased the said rectory of *T. Short* and his wife, for one thousand and sixty pounds; that by indenture, dated the twenty sixth of *March* 1717, they granted to him the said rectory; that he being dead, the said rectory descended to his said five daughters, as coheirs; that the said *Drew*, in his life time, received a moiety thereof without any interruption from the plaintiff, or any other vicar; but he insisted, that he as vicar was entitled to half the great tithes, to the tithes of *Acton Meadow*, and the said five acres, and to all small tithes arising in the parish, and that by a *terrier*, taken the eighth of *May* 1706, of the glebe lands, messuages, tenements, and portions of tithes in the said parish, IT WAS PRESENTED, that the vicars of the said parish are entitled to all small tithes, to half the great tithes of the said parish, to the tithes of a piece of ground adjoining to *Barber Heath*, about five acres lying in the parish of *Great Warmingfield*, in the occupation of *J. Upton*, and to the tithes of *Acton Meadow*, otherwise *Whitting Meadow*, about three acres and an half in *Milford*, in the occupation of *Francis Martin*; that by another *terrier*, taken the nineteenth of *June* 1716, all small tithes, and an endowment of half the great tithes of the said parish, the tithe of *Acton Meadow*, and of

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one piece of arable land containing five acres in *Warmingfield*, in the occupation of *J. Lamb*, are declared payable to the vicar of the said parish; that it had always been declared by ancient persons of the said parish, as long as any one now living can remember, that all the small tithes of the parish, and all tithes of the said meadow and piece of arable land did always belong to the vicar; that the said *Drew* having taken out of the town chest the terrier of the parish, acquainted the plaintiff, who had married the defendant *Mary*, the daughter of the said *Drew*, that the said *Drew* was entitled to a moiety of all tithes, great and small, in the parish; that the plaintiff having been presented by him to the said vicarage in 1729, acquiesced therein, and permitted him to receive the same, he not being informed of his right to the tithes he now claims, till the death of the said *Drew*, who, conscious of his having no right to the small tithes of the vicarage, described the said rectory in his will, without taking notice of the small tithes thereof; that the defendants had, since the said *Drew's* death, received a moiety of the small tithes, and also the tithes of *Aston Meadow*, and the said five acres of arable land in *Warmingfield*, and that they refused to account with him for the same. The bill therefore prayed, that the defendants might account with the plaintiff for the said tithes from April 1740, when they came into possession of the same; and that the plaintiff's right to the said tithes so claimed by him as aforesaid, might be established by the decree of this court.

UMFREVILLE
against
HICKERING-
GILL.

The defendant *Hickeringill* and others admitted the plaintiff to be lawful vicar of the said vicarage and parish church of *Aston*, and, as such, entitled to all tithes of right due to the vicar there; and said, that by some ancient endowment, or long immemorial usage, the vicars of the said parish had been and are entitled to a moiety of all the great and small tithes in the said parish, but not to all the tithes of *Aston Meadow*, and of five acres of land in *Warmingfield*, or to all the small tithes yearly growing in the said parish; for that the defendants, the five daughters and coheirs of the said *Drew*, were entitled to the impropriate rectory of *Aston* aforesaid; that the said rectory contained a moiety of all tithes, both great and small, arising in the said parish; and they set forth their title to the same; that the plaintiff, in the life-time of the said *Drew*, and since his death, had only received a moiety of great and small tithes in the parish, and never, till very lately, claimed any other tithes arising there; that by a terrier, made in 1729, and signed by the vicar and churchwardens and some of the principal inhabitants, all great and small tithes in the parish appear to be partable in equal shares, between the vicars and impropriators; that ever since *Drew's* death, they and the plaintiff in right of the defendant *Mary*, had received a moiety of all the small tithes of the said

The defendants, the impropriators of the rectory, say, that the vicar is only entitled to a moiety of the great and small tithes of the parish of *Aston Meadow*, and *Warmingfield*.

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against
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GILL.

vicarage, which they insisted was the impropriator's moiety; and also a moiety of the tithes of *Aston Meadow* and the said five acres in *Warmingfield*, which they insisted belonged to the impropriators; therefore they have not set out any account of the said tithes; and that the three terriers might have been presented; but they denied that the rectory was described in the will of *Drew*, as in the bill is mentioned; and insisted, that the defendants the daughters of the said *Drew* were, as impropriatrixes, entitled to the moiety of the great and small tithes arising in the said parish, and to the tithe of *Aston Field*, and of the said five acres in *Warmingfield*.

The defendant *Jennens* said, that he was informed that *Mary*, the plaintiff's wife, and her four sisters, were entitled, as daughters of the said *Drew*, to the said rectory of *Aston*, which, as he apprehended, contained a moiety of all tithes great and small; that on such presumption he had contracted with the plaintiff and the defendants for the purchase of the said rectory and advowson, and four acres of copyhold land, for two thousand, eight hundred, and eighty pounds, in case the said rectory contained a moiety as aforesaid; but whether the said rectory contained such moiety, or whether the plaintiff was entitled to all small tithes as vicar, and one moiety of the great tithes in the said parish, and the tithes of *Aston Meadow* and the said five acres in *Warmingfield*, he submitted to the court.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and a copy of a terrier of the glebe lands belonging to the said vicarage, dated the eighth of *May* 1706, in the registry of the *Bishop of Norwich*, being offered to be read, and an objection by the defendant's counsel, over-ruled, and the copy read; a copy of another terrier, dated the nineteenth of *June* 1706; another, dated the twenty-seventh of *June* 1740, offered and objected to by the defendants counsel, and refused; the deposition of *W. Jennens*; and reading the answers, and several depositions; and the agreement touching the defraying the expence of the suit by the defendants; and on full debate;

The vicar not
having proved
his title, the bill
is dismissed.

THE COURT ordered, that as the plaintiff had not, as vicar of *Aston*, made out any title to all the small tithes within the said parish, or to all the great and small tithes of the said five acre piece, and of *Aston Meadow*, but only to a moiety of all the great and small tithes, the bill should stand dismissed out of this court, so far as it related to the establishing his right to the same; with costs to be taxed.

BISHOP

BISHOP *against* BRAHAM; *et è Contra.*MICH. TERM.
28. GEO. 2.

Suffolk, 18th November 1754.

THE rector of *Ash*, near *Sampford* and *Campsey*, in the county of *Suffolk*, claimed all manner of tithes arising in the parish, particularly the tithes of corn, beans, pease, grain, hay, grass, clover grass, turnips, sheep, lambs, pigs, wool, and geese, in kind; and for every dairy cow having had a calf that year, threepence; for every tenth calf, two shillings; for every calf under ten being sold, twopence; for such as are killed or weaned, one penny; for every heifer gait were bud, three halfpence; for every hearth hen at *Christmas*, sixpence; fruit, twopence; pigs and geese in kind, allowing one halfpenny for ten, and to have but one halfpenny a-piece to seven; and stated, that since his institution in the year 1751 he had enjoyed all the great and small tithes, except such small tithes for which such customary payments were made as aforesaid, and *Easter* offerings; that the defendants had, during that period, jointly occupied a farm, and lands therein, and had for two years wheat, rye, oats, barley, pease, and beans, growing thereon; that about one hundred acres of the said farm was feeding land, which had formerly been a park, but had not for many years then last past been used as a park, but had been parcelled out and separated, and some of it mowed, and the other parts of it grazed; that his predecessors had taken the great tithes of the said farm and lands when ploughed and sowed, and the tithe of hay when they were mowed, and an allowance for the depasturing thereof when grazed; that during the said years, the defendants had cut and mowed from the said farm, as well from that part of it which had never been part of the *Park* as from that which had been part thereof, great quantities of corn and grain, and had carried the same away, without setting out the tithes thereof, or making him any satisfaction for the same. The bill further stated, that the defendants, during the said period, had also occupied another farm and lands, and had cut and mowed from divers acres thereof natural grass, clover grass, and other sorts of grass, and made the same into hay, the tithes of which they had converted to their own use; that they had also fed thereon divers cows which had calves, which had been sold, killed, and weaned; and for which customary payments were due to the plaintiff as aforesaid; that they also had sheep, which yielded wool and lambs; that they also had sows, pigs, geese, ducks, hens, turkeys, and other poultry; bees, wax, honey, roots, and herbs of all sorts; that they also had thereon horses and mares, and had bred a number of colts, and fed sundry barren and unprofitable cattle, and had other titheable matters. The bill therefore prayed, that the defendants might come to an account, and be compelled to pay the plaintiff the tithes then due and in arrear.

The rector of *Ash*, near *Sampford* and *Campsey*, in *Suffolk*, is entitled to the great and small tithes of the *Park* Lands in kind, and to certain *moduses* in lieu of the tithes of cows, calves, firewood, gardens, pigs, and geese.

The

BISHOP
against
BRANAM;
et c. Contra.

The defendants admitted, that the plaintiff was then rector of *Asb*, and entitled to all the tithes of the parish, except as after-mentioned; and that they had held the farms and lands mentioned in the bill; but, after setting forth the quantities of corn they had grown thereon, they said, that about ninety acres of the said farm were anciently a *park*, wherein deer were kept; that the same had been disparked about thirty years ago; that the lands called *the Park Lands* had been partly tilled or mowed, and the residue thereof fed; and that the plaintiff was not entitled to any tithes, or any payment in lieu thereof, for the said ninety acres so disparked, other than half a buck, which the occupiers thereof had immemorially paid to the plaintiff's predecessors yearly, on the twentieth of *July*, or so soon after as the same had been demanded, in lieu of all tithes of the said ninety acres; and that the said half buck had been constantly accepted and received by the plaintiff's predecessors, or their farmers, in lieu of such tithes. They admitted, that some of the plaintiff's predecessors had taken tithes in kind of the said *Park Lands* since the same had been disparked, but that such tithes had been paid by the tenants without the knowledge or consent of them or their ancestors; and therefore such payment was not sufficient to destroy the *modus* of half a buck yearly, the said payment of the half buck being annexed to the lands, and not annexed to them merely as a *park*. And they said, that they had made the plaintiff a satisfaction for all other tithes, or had offered him a reasonable satisfaction for the same.

The defendants, on behalf of themselves and all other inhabitants of the town of, and owners and occupiers of lands in, *Campsey Asb*, filed their cross bill against the plaintiff, stating, that in the said town and parish there are the following immemorial customs: that every inhabitant of the said town should yearly, on *Michaelmas Day*, or so soon after as lawfully demanded, pay to the rector of the parish threepence, in lieu of the tithe for every dairy milch cow having had a calf that year; two shillings, in lieu of the tithe for every tenth calf in one year; twopence, in lieu of tithe for every calf that falls under the number of ten being sold; one penny for every calf killed or weaned; three halfpence for every gait beast and heifer gait were, and bud; a *hearth ben*, at *Christmas*, in lieu of the tithe of all fuel burnt on their respective messuages or cottages; twopence for an ancient garden and orchard, in lieu of tithes for such garden and orchard; for every seven or more geese or pigs, one pig or goose, on being allowed one halfpenny a piece to make the number ten; one halfpenny a-piece for every pig or goose under seven, in lieu of tithe for pigs or geese; and half a buck on the twentieth of *July*, or so soon after as demanded, in lieu of all tithes arising from the said ninety acres, called *the Park Lands*. The answer further stated, that the said *moduses* and half buck had

had been constantly paid to the rector of the said parish till the year 1719, when *Mr. Carew*, the then rector, endeavoured to gain to himself tithes in kind, by refusing to accept the same, particularly the half buck; that he had continued to refuse the same until his death; and that the plaintiff in the original cause had ever since also refused to accept the same; but that the said inhabitants and occupiers had every year since *Carew* refused to accept the said *modus*es made legal tenders of the same. The cross bill therefore prayed, that an issue at law might be directed to try the validity of the said *modus*es, if the same were not admitted; and that the same might be established, and the testimony of their ancient witnesses perpetuated.

BISHOP
against
BRAHAM;
et c. Contra.

The rector admitted, that there were several and immemorial customs relating to the payment of tithes to the parson of the parish, which had been allowed and registered in several terriers returned into the court of the *Bishop of Norwich*; that the said customs are, that all the corn tithes within the said parish shall be paid to the rector or his tenants in their proper kinds; and he set out the custom for payment of the tithes for every cow having had a calf, gait beast, heifer, gait were bud, hearth hen, pig, and goose, to be the same as in the cross bill was set forth; and also, that twopence were payable at *Easter* for every communicant; twopence for fruit; and for mortuaries according to the statute; and he set out what was payable for other tithes; and said, that the said customary payments had been always submitted to as well by his predecessors as by himself; and that he never designed to dispute the same, except as to *the Park Lands*. He also admitted, that the said ninety acres had been anciently fenced in as a *park*; that deer had been kept therein; that the same had been disparked about the time mentioned in the bill; that they had since been called *the Park Lands*; and that they had been either tilled, mowed, or fed; but he denied that, to his knowledge, the plaintiffs, their ancestors, or tenants, had immemorially paid a *modus* of half a buck to the rectors of the parish yearly, at any time, in lieu of any tithes arising from the said ninety acres; or that the said half buck was at any time received by any of the rectors of the parish in lieu and satisfaction of all such tithes as annually arose from the said *Park Lands*; or that it was tendered to and accepted by the rectors of the parish in lieu of the tithes for such *Park Lands* till the year 1719; but that if it had been yearly given, it must have been given as a present rather than as a *modus* in lieu of tithes, for that very little could arise from a park fed with deer which was titheable. He also insisted, that if such customary payment had been made for the said lands whilst a *park*, yet that, when the said lands were broke up, the deer destroyed, and the park lands disparked and put into tillage, such payment of half-a-buck yearly for the said lands when a park must also cease, as from that time the nature

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BRAHAM;
et c. *Contra.*

nature of the land was altered, and the rectors entitled to the tenth of all corn, hay, and other things, which had arisen thereon since such alteration. He said, that he had no objection to the plaintiffs perpetuating their evidence touching the payment of tithes, and that he was ready and willing to try the validity of the said pretended *modus* of half a buck by any issue at law, if the Court should think fit to order the same,

The plaintiffs in both causes replied; the defendants rejoined; and witnesses were examined; and upon hearing counsel for all parties; and reading several proofs in both causes; and upon full debate of the matter; the Court ordered a trial to be had according to the rector's submission on the following issue, *viz.*
 " Whether the owners or occupiers for the time being of the
 " ninety acres of land, or thereabouts, lying in the parish of *Ab*,
 " near *Sampford* and *Campsey*, in the county of *Suffolk*, called
 " the *Park Lands*, heretofore inclosed and fenced round as
 " a park, and wherein deer were kept, have, for time whereof
 " the memory of man is not to the contrary, paid, or ought to
 " have paid, a certain *modus* or customary payment of *half a buck*
 " to the rectors of the said parish, or their lessee or lessees for
 " the time being, yearly and every year, upon the twentieth day
 " of *July*, or so soon after as demanded, for and in lieu of all
 " tithes yearly growing, arising, or renewing upon or from the
 " said ninety acres of land, or thereabouts? and, whether such
 " *half buck* had been constantly, during the time aforesaid,
 " received and accepted, or ought to have been received and
 " accepted, by the rectors of the said parish, or their lessee or
 " lessees for the time being, in lieu and satisfaction of all such
 " tithes as aforesaid?" The cause to be tried by a special jury, and all further directions and costs touching the said issue to be reserved till after trial.

THE COURT ordered the several other *moduses* to be established; and the deputy remembrancer to state an account of what was due to the plaintiff in the original cause for the said several *moduses*; and also for the tithes of the other titheable matters demanded by the bill; together with the rector's costs in both the said causes; and the cause to be further heard on the *postea* and report.

The *Brahams*, as appeared by an order made the twelfth of *February* last, had not proceeded to try the said issue, although *Bishop* had been ready to try the same; and a rule was granted to shew cause why the said issue should not be taken as confessed by them; which rule, by an order made the twenty-eighth of the said *February*, was made absolute, no cause having been shewn; and the deputy was ordered to proceed *ex parte* to take the said account.

The

The deputy made his report, dated the third day of May instant; and upon reading the said decree, orders, and report;

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against
BRAHAM;
et c. *Contra.*

THE COURT, on the thirteenth of May 1756, ordered the report to be ratified and confirmed, and the defendants to pay thirty-eight pounds and fivepence reported due for the several *modus*es and tithes therein mentioned (except for the lands called *the Park Lands*); and all costs in both the causes; and also the costs relating to the issue up to this time.

THE COURT also ordered the issue to be taken as confessed; and the deputy to state an account of what was due to the plaintiff for the tithes which arose upon *the Park Lands* during the time demanded, with subsequent costs relating thereto.

MOSE *against* BRYDGES; *et c. Contra.*

EASTER TERM
28. GEO. 2.

Somersetshire, 20th February 1755.

THE bill stated, that the plaintiffs were owners and occupiers of lands in the parishes of *Leigh upon Mendip* and *Mells*, in the county of *Somerset*; that the defendant *Paget*, for two years past, had been rector of *Mells*, to which *Leigh* is annexed, and was entitled to the glebe lands; to all tithes payable in kind; and to divers *modus*es in satisfaction of tithes not payable in kind; that the said *Paget*, in the year 1751, demised the rectory to the other defendants for some term yet subsisting; and that the plaintiff *Mose*, for all the time the defendant *Paget* had been rector, and the other defendants his lessees, had been, and then was possessed of *Ram's Tenement*, and thirty acres of land within the said rectory; that there was, by ancient custom, payable to the rector or his lessee, seven shillings, at *Lammas* yearly, as a *modus*, in satisfaction for all tithes of the said tenement. The bill further stated, that *Mose* had been, for all the time aforesaid, possessed of five acres, called *Small Gains*, in the said parish; and that, by the like custom, there had been paid at *Lammas* yearly, three shillings as a *modus*, in lieu of the tithes of the said five acres. The bill further stated, that the plaintiff *Ram* was possessed of five acres of ground, called *the Warren*, and that there were four shillings as a like *modus* payable in lieu of the tithes thereof; that the plaintiff *Hancock* was possessed of *Whitehole Close* and *Robins's Closes*, and that a *modus* of two shillings was payable for the same; that the plaintiffs *Smiths* were possessed of *Seven and Four Acres Closes*, and a paddock near *Bloom's Mill*, for which a *modus* of five shillings was payable; that the plaintiff *Bowles* was possessed of *King's Meadow*, for which three shillings and eightpence were payable; that the plaintiff *Cornish* was possessed of eight closes, for which fourteen shillings were payable; and also of a close in *Vabster's Marsh*, called

The rector of the parishes of *Leigh upon Mendip* and *Mells*, in *Somersetshire*, is entitled to the great and small tithes in kind of the lands called *the Warren*, *Whitehole Close*, *Robins's Close*, *the Seven Acres*, *the Four Acres*, a paddock near *Bloom's Mill*, and *the Parsley Bed*.

Moss
against
BAYDGES;
et c. Contra.

called *the Tynning*, for which one shilling was payable; and of *Trogbury Close*, for which two shillings and sixpence were payable; and *Bodylands*, for which one shilling and sixpence were payable; and *Tynnings*, for which one shilling was payable; that the plaintiff *Biffex* was possessed of *the Parsley Bed*, for which three shillings and sixpence were payable; and of *Coleford Ground*, for which ten shillings were payable; that the plaintiff *Treasure* was possessed of *Temple House*, and fifty-six acres of land thereunto belonging, for which forty shillings were payable; that the said *modus*es had, time out of mind, been observed and paid to the rectors of the said rectory, their farmers and lessees; and that no tithe in kind for the said premises, or any of them, had been paid or before demanded. The bill therefore prayed an injunction, and a discovery of the matters aforesaid.

The defendant *Paget* said, that he had been rector of *Mells* from the eighth of June 1751; that the parish of *Leigh upon Mendip* was a chapelry parcel of and annexed to the said rectory; that being seised thereof, and of the glebe lands, tithes, and hereditaments belonging thereto, he, in the said year, leased the same to the other defendants for two hundred pounds; and he denied the existence of the several *modus*es mentioned in the bill, save only that the plaintiff *Cornish* had paid twenty shillings in lieu of the tithes of his lands, as in the answer mentioned, and except only *Frogbury*, *Bodylands*, and for *the two Commons*; but whether he paid the same as a *modus* he knew not.

The other defendants, lessees under *Paget*, answered to the same effect.

The rector and his lessees filed a cross bill against the plaintiffs, stating their title to the tithes in kind of the parishes of *Leigh upon Mendip* and *Mells*; that no *modus* had been payable in satisfaction thereof; that in 1721 the then rector raised the compositions of five pounds *per annum*, and the occupiers had apportioned the same among them in proportion to their estates; that tithes in kind had been frequently taken for all the said lands; or if the same were compounded for, it was after the rate of four shillings an acre for wheat, and two shillings and sixpence for lent corn; and prayed a full discovery of the tithes.

The defendants said, that they were occupiers of the lands and tenements in the bill described; that they had neglected to set forth their tithes, or to make any composition for the same with the plaintiffs; and they set forth the several lands, &c. occupied by them, and the several *modus*es payable for them, and for the tithes thereof; and insisted, that the *modus*es had been collected half-yearly; that no corn or hay had ever been tithed in kind; that the plaintiffs were not entitled to have or receive the same in kind, or any composition for the same, other than the said *modus*es

DURING THE REIGN OF GEORGE THE SECOND.

511

modus before mentioned ; and that the said five pounds a-year was a voluntary contribution to the curacy.

MOOR
against
BAYDERS ;
et c. Contra.

The plaintiffs in both causes replied ; the defendants rejoined ; and witnesses were examined in them ; and upon hearing counsel for all parties ; and reading an order, dated the twenty-eighth of *November* last, for reading the depositions in each cause, &c. ; the answers ; and the several proofs taken ; several accounts of tithes of the parish of *Leigh* ; a book, being a rate of tithes for *Leigh* in 1721 ; and on full debate of the matter ;

THE COURT ordered the original bill to be dismissed as to the *modus* of four shillings insisted on by *J. Ram*, in lieu of the tithes of five acres, called *the Warren* ; as to the *modus* of two shillings insisted on by *J. Hancock*, in lieu of the tithes of two closes of ground, called *Whitehole* and *Robins's* ; as to the *modus* of five shillings insisted on by the *Smiths*, in lieu of the tithes of two closes, called *the Seven Acres* and *Four Acres*, and a paddock near *Bloom's Mill* ; as to the *modus* of three shillings and sixpence insisted on by *J. Bissex*, in lieu of tithes of a close called *the Parsley Bed*, without costs ; and as to all other matters with costs.

THE COURT also ordered the cross bill to be dismissed without costs as to any demand of tithes for the lands for which the said four several *modus*es were alledged to be payable, but without prejudice to the demand of the plaintiffs in the cross bill of tithes in kind for the said lands ; and the defendants in the cross cause to account for all tithes, both great and small, which they had on all other lands by them occupied in the parishes of *Leigh upon Mendip* and *Mells*, with costs to be taxed.

On the fourteenth of *July* 1756, the report was confirmed, and payment ordered of what was reported due.

CRABB against MOORE.

MICH. TERM,
29. GEO. 2.

Dorsetshire, 10th December 1755.

THE rector of *Child Okeford Inferior*, in the county of *Dorset*, claimed all the tithes of the parish, both great and small ; and stated, that the defendant occupied a quantity of grass pasture, and, to defraud him of the tithes thereof, had, during the last year, laid it up for a shorter time than usual, and taken from it a small crop of hay, in order to avoid paying any tithe of the after-pasture for the rest of the year ; that he had also fed in the winter half year great numbers of sheep, lambs, and lean cattle, both of his own and of other persons, for the tithes of which he had refused to account ; that he had also kept a

The rector of *Child Okeford*, in *Dorsetshire*, claims the tithes of agistment, calves, milk, of cattle fed and bred on a stinted common, and of the after-pasture of certain pasture grounds, which the plaintiff

charged had been fraudulently laid up to avoid paying tithes of the after pasture.
number

CRABB
against
MOORE.

number of milch cows, heifers, and calves, for which he had refused to pay tithes.

The defendant
says, that there
are two recto-
ries ;

The defendant said, that there were two rectories in *Child Okeford*, the one called *Child Okeford Superior*, or *the Upper Parsonage*, and the other *Child Okeford Inferior*, or *the Lower Parsonage*, and only one church for both, at which the rectors, when the rectories were held by different persons, used to officiate alternately ; that the plaintiff was rector of *Child Okeford Inferior* ; that the plaintiff's brother was rector of *Child Okeford Superior* ; but that the plaintiff had always received the tithes thereof ; that the plaintiff's father having been many years rector of both the said rectories, the defendant, from the long unity of possession, knew not to which of the present rectors the tithes of the lands in the said parish belonged. The answer further stated, that the defendant had always lived in the said parish, and during the said year had occupied a small estate of his own, and several meadow, pasture grounds, and commons of pasture, which were used for dairy cows, heifers, and young cattle breeding up for the dairy ; for feeding a few sheep in winter, and in mowing for hay ; but he denied that he had laid up any of the

his grass-grounds
at the usual
times ;

grass-grounds for a shorter time than usual, with a view to defraud the plaintiff ; and he set out the names of the fields and quantities of acres which he had mowed ; and averred, that the plaintiff had taken the tithes in kind. He also said, that he and others had laid up their meadows sooner or later as they had occasion, according to the season ; and he set forth the number of lean cattle he had in the said year breeding up for the dairy ; the number of lambs, and how many sheep and lambs he had agisted during the winter ; the hog-sheep that had been kept in the hay grounds ; the quantity of hay that had been mowed thereon, and the number of ewes that had been particularly kept in the mowed grounds and in the pasture grounds ; and said, that they had been fed all the time with the hay. He admitted, that he had not paid tithes for such lean cattle, sheep, and lambs ; and said, that he did not believe it had ever been done, or that it was due, nor had the plaintiff ever demanded the same ; and he tendered two shillings for the pasture of the sheep kept on the grounds which had not been mowed, with costs. He also said, that he had milked several cows and heifers in the said parish, and had never heard that tithe milk was ever paid or demanded,

that he agisted
ewes and sheep
thereon, and fed
them with the
hay ;

that, no tithes
are due for such
agistment ;

but he tenders
2s. for the tithes
of the lambs ;

that 4d. a cow,
and 3d. a heifer,
are due in lieu of
tithe milk ;

and tenders the
same ;

for that a *modus* of fourpence for every milch cow, and threepence for every heifer, had been yearly paid to the rectors, for time immemorial, in lieu of all tithe milk ; and that he tendered five shillings and ninepence, viz. fourpence a-piece for his twelve cows, and threepence a-piece for his seven heifers, on the fifth of *May 1752*, for the tithe milk. He admitted that he had taken in a quantity of sheep to agist ; but insisted, that no tithes had ever been paid for such agistment. He also stated, that after his

grass

grais was mowed, he usually laid up his grounds for six weeks, and then turned in his cattle, and after some time changed them of course into other fresh pastures till the grounds were laid up again for hay, which was the general course of husbandry in the country, but had never heard that the tithe of after-grais had ever been demanded or paid; that the after-grais was worth five shillings or five shillings and sixpence an acre; but that it would be less if the hay was not spent thereon. He also said, that there was a *stinted common* in the parish from the third of *May* to the tenth of *December*; that the rector had a right to feed a certain number of beasts thereon in lieu of all tithes arising in the said common, which was held to be in lieu of all tithe of cattle or sheep fed there, or for calves or lambs dropped there; and that none of the rectors were entitled to the calves that fell there, or had ever demanded the same. He said, that he did not know, that the parish had ever obliged the plaintiff to keep a bull on the said common, but that he had been informed by ancient people that each of the rectors ought to keep a bull in the parish for the use of all the milch kind there: and he set forth the value of his titheable matters and tenders.

CRABB
against
MOORE,

that the rector
had a right to
feed a certain
number of cattle
on the Common,
in lieu of the
tithes thereof;

that the rector is
obliged to keep
a bull thereon.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel on both sides; and reading the answer relating to the sheep and lambs; and on offering to read the depositions of *C. Burris*, which was objected to, but it appearing that he had been cross examined for the plaintiff the objection was over-ruled; and several depositions; and on full debate;

The cause
heard.

THE COURT directed an issue, "Whether, for the time whereof the memory of man is not to the contrary, there hath been paid and payable yearly, by every occupier of land depasturing milch cows or heifers milked within the parish of *Child Okeford* to the parsons or rectors of the said parish, their lessee or lessees, for the time being, a *modus* of fourpence for every milch cow, and another *modus* of threepence for every heifer milked within the said parish; and whether such *moduses* respectively have yearly, for all the time aforesaid, been taken and accepted, or ought to have been taken and accepted, by the parsons or rectors of the said parish, their lessee or lessees for the time being, in lieu and full satisfaction of all tithe of milk arising from such cows and heifers respectively."

Issues directed
to try the *mod-
uses* as to cows
and heifers.

THE COURT further ordered the deputy to take an account of what was due to the plaintiff from the defendant for his calves fallen on the common, and to tax the plaintiff his costs of this suit, so far as relates thereto; and also for the value of the agistment tithe of the twenty ewe sheep depastured on the defendant's farm during the time demanded by the bill; the costs as

The tithes of
calves bred on
the Common de-
creed.

The tithes of
ewe sheep fed
on the farm de-
creed.

CRABB
against
MOORE.

The tender of
2s. for tithe
lambs accepted.

The bill as to
the charge of
fraudulently
laying up the
grass grounds
dismissed.

A verdict found
in favour of the
modus.

Tithe milk de-
creed according
to the *modus*.

to the tithe of ewe sheep to be reserved till the further hearing of the cause.

The plaintiff consented to accept the tender of two shillings for the tithe of lambs, and the same was ordered to be paid accordingly, together with the plaintiff's costs in respect thereof to the time of filing his answer.

THE COURT also ordered the bill, so far as it related to the charge of fraud in the defendant's not laying up his ground at the usual time, and of agistment tithe, and also to the demand of agistment tithes (except for calves fallen on the aforesaid common and the twenty ewe sheep and lambs aforementioned) to be dismissed, with costs to be taxed.

The said trial was accordingly had, and a verdict given for the defendant; but by an order made the twenty-first of May last, a new trial was ordered to be had before a special jury, upon payment of costs, and a verdict was again given for the defendant upon both the issues. On the fifth of December 1757, the cause came on for further directions on the *poslea*; and upon reading the decree and *poslea*; and hearing counsel on both sides;

THE COURT ordered the bill, so far as the same related to the tithe of milk arising from cows and heifers milked in the parish of *Child Okeford*, to be dismissed, with costs both at law and in this court.

PARKER, *Chief Baron.*
SMYTHE, *Baron.*
ADAMS, *Baron.*

HILARY TERM
29. GEO. 2.

KIRSHAW *against* ISLES.
Yorkshire, 9th February 1756.

The vicar of
Leeds, in *York-*
shire, claims the
tithes of turnips
sown and eaten off
the lands by the
cattle of the pur-
chaser.

THE plaintiff, as vicar of the vicarage and parish-church of *Leeds*, in the county of *York*, claimed all tithes, both great and small, except of corn, grain, hay (a), and the tithes of two mills in the township of *Leeds*; all offerings, oblations, and other ecclesiastical dues and duties, particularly the tithes of

(a) In the case of *Atkinson v. Clarke*, which came before the court of exchequer on the 18th of June 1696, the Plaintiff, as lessee of the tithes of corn and grain in the tithing of *Begston*, in the parish of *Leeds*, under the *Earl of Burlington*, who was lessee of the rectory under the dean and chapter of *Christ Church*, in *Oxford*, prayed a discovery and payment of the tithes of corn and grain which the defendants had had on a farm called *Gatt Begston*, in the said tithing, in the year 1694. The defendants pretended, that there was a *modus* of ten shillings a-year in lieu of

the corn tithes of the said farm. But THE COURT, on reading the defendant's answers, and the defendants not attending the hearing of the cause, decreed them, on the 7th of July 1696, to account for the said tithes; and on the 9th of November following, the deputy's report of the 30th of October preceding was ratified and confirmed. But see *Ralph Thoresby's History of the Church of Leeds*, published in the year 1724, respecting the tithes of corn, grain, and hay of this parish, pages 10 and 111.

potatoes

potatoes, turnips, rape, and other seeds, and also the tithes during the vacancy of the vicarage, while it was under sequestration. The bill stated, that the defendants *Isles* and *Hanson* had occupied, for seven years past, distinct messuages and lands in the parish; that they had sown thereon potatoes, turnips, and rape seed; that they had kept barren and unprofitable cattle on their said grounds; and that they had agisted them on turnips, for which they refused to pay tithes except when severed; that the defendants *Barker* and others had bought the said turnips growing upon the lands of the said *Isles* and *Hanson*; that they had eaten such turnips so growing with their sheep and cattle; and that they ought to pay tithes for the same, though they never farmed the land whereon such turnips grew, but had bought the same of the other defendants, and had no greater interest in the said land than in eating the said turnips thereon. The bill therefore prayed, that the said defendants might account with the plaintiff for all the said tithes, and other dues and duties so grown due to the plaintiff, and payable by them as aforesaid; and that the defendants, and each and every of them, might pay to the said plaintiff what, on a fair and just account to be taken of the said tithes, dues, and duties, should appear to be due to him.

KIRKSHAW
against -
Isles.

The defendants *Isles* and *Hanson* admitted, that the vicar was well entitled to all tithes, ecclesiastical dues, and payments, as stated in the bill, except the tithe herbage and the tithe of turnips which had been eaten by cattle or sheep as herbage upon the ground where such turnips grew; and said, that the vicars had never received or demanded any tithe herbage of grass or of turnips eaten on the ground, or any *modus*, composition, or payment in lieu thereof; that on the death of *Mr. Cookson*, the last incumbent, *sequestrators* were appointed until the present vicar's induction; and that he was entitled to such tithes and dues as belonged to the vicarage during such vacancy; but that the tithe herbage of turnips was a new claim. They also said, that by the custom of the parish for time immemorial the parishioners had gone to the vicar about *Easter*, and accounted for their tithes; that the present parishioners had accounted with the present vicar for their tithes at *Easter* 1752; that he then insisted upon the tithe of turnips eaten with cattle and sheep, but that they had refused to pay the same, as they had let their turnips to other persons to be eaten off the ground by sheep and other cattle; that for the year 1753 they had offered the plaintiff their tithes, which he had refused to accept without the aforesaid tithe of turnips; and therefore they made tenders for the same; and they denied that any tithes for herbage or for turnips eaten on the ground were due to the plaintiff, or any *modus* or composition for the same.

The defendants *Isles* and *Hanson* say, that they sowed their lands with turnips, and let them to the other defendants to be eat off the ground by sheep and other cattle; and therefore if any tithes were due for the same, that such tithes ought to be paid by the purchaser of the turnips.

KIRSHAW
against
ISLES.

Isles insists on a
modus of 16d. an
acre in lieu of
tithe herbage
and turnips eat-
en off the land.

The defendant *Isles* insisted upon an ancient *modus* or prescriptive payment of sixteenpence an acre, which, he said, had, for time immemorial, been payable every year by the owners and occupiers of his farm in *Potter Newton* and others there, and which had been yearly paid to the *Earl of Burlington*, as impropiator of the rectory of *Leeds*, in lieu of tithe hay arising on the said premises, and also of the tithe herbage thereof; and that turnips eaten on the ground by cattle was of the nature of herbage, and covered by such *modus*, and not payable in kind, either to the rector or to the vicar of the said parish.

Hanson insists on
a *modus* of 10s.
a year in lieu of
tithe hay and
herbage; and
that the eatage
of turnips is co-
vered ther-by.

The defendant *Hanson* insisted, that there was an ancient *modus* of ten shillings a-year immemorially paid by the owners and occupiers of lands and tenements in the township and constabulary of *Chapel Allerton*, in the parish of *Leeds*, in which his lands lay; that the said *modus* was paid once in every six years to the *Earl of Burlington*, as impropiator of the said rectory, in lieu of tithe hay and herbage: and he insisted, that the eatage of turnips was covered by the said *modus*.

They also say,
that they did not
feed any of their
own cattle on the
said turnips.

The defendants *Isles* and *Hanson* further said, that all the grounds they had sown with turnips were let with the turnips to be eaten off by cattle and sheep; and that they agisted none of their own; and therefore they submitted, that those persons to whom the turnips were let, and not the occupiers, ought to pay the tithe thereof, if any was due, which, as they did not admit, they had not kept any account of till *Easter* 1752: and they set forth the number of acres they rented; how many they had sown with turnips; the quantities and values thereof; and the values of the tithes.

They deny the
existence of o-
ther *moduses*.

The defendants also said, that the said *moduses* had been paid for their said farms immemorially to the *Earl of Burlington* and his ancestors, or to their lessees; and they denied all knowledge that fivepence for every dwelling-house within the *Bars* of the town of *Leeds*, or threepence for every one without, or twopence for every garden, or twopence for every person resiant above sixteen years of age within the parish, or a penny for every offering, were due to the plaintiff; but they said, that they believed he might have a right to such payments.

The defendants
Barker and *Sherwood* say, they
are butchers and
partners; that
they bought the
turnips of the
other defend-
ants.

The defendants *Barker* and *Sherwood* said, that they were butchers and partners in trade, and had for several years past bought of the defendant *Hanson* several quantities of turnips growing upon the lands, but that they could not set forth the quantities or number of acres, or what price they had paid for the same; and that, by agreement, they were obliged to eat the said turnips upon the ground with sheep and cattle till eat up, and no longer, which generally happened about *March*; that they did not believe that by any law, usage, or custom, the purchaser was obliged to pay any tithe in kind of such turnips, or any pecuniary satisfaction

satisfaction in lieu thereof, to the vicar of *Leeds*; and they submitted to the Court, that the same ought to be paid by the tenants or occupiers of the land on which such turnips grew, and who had sold the same to the said defendants.

KIRSHAW
against
ISLES.

The defendant *Thompson* said, that he had for the said years agreed with *Hanson* and *Isles* for the eatage of several acres of turnips, in the same manner as the other defendants.

The defendant
Thompson says the
like.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the part of the plaintiff and the defendants *Isles* and *Hanson*; and upon hearing counsel, the defendant's counsel objected to the plaintiff proceeding further in the hearing of his cause, for that the impropiator of the great tithes was no party to this suit; but on hearing counsel on both sides, the Court over ruled the objection.

An objection
that the impro-
priator ought to
have been a par-
ty over-ruled.

And upon reading, for the plaintiff, an indenture dated the twenty-seventh of *September* 1676, signed *Burlington* and *Cork*, and the schedule annexed thereto; a book beginning 1730, being a late vicar's tithing table of the parish; and reading several depositions for the defendants;

The evidence
read.

THE COURT ordered the defendants *Isles* and *Hanson* to account for the several titheable matters and things demanded by the said bill; and pay the plaintiff his costs of this suit, to be taxed.

Isles and *Hanson*
ordered to pay
the tithes, with
costs.

THE COURT further ordered the bill to be dismissed as to the other defendants, with costs to be taxed, which are to be paid them by the plaintiff, and the defendants *Isles* and *Hanson* are to repay the plaintiff the same.

The bill dismiss-
ed with costs as
to *Harker*, *Sher-
wood*, and *Thomp-
son*.

THE COURT further ordered the defendant *Thompson* to pay to the plaintiff such costs for the several other matters and things set forth in his answer, which were not required to be set forth by the bill, and which costs the deputy remembrancer is to tax.

Thompson order-
ed to pay costs.

The deputy made his report, dated the thirtieth day of *June* last; and on the seventh of *July* 1757, it was ratified and confirmed, with subsequent costs; and the defendants *Isles* and *Hanson* ordered to pay to the plaintiff the several sums reported due for their several titheable matters and things arising on the lands in their possession in the parish of *Leeds*, with their taxed costs.

The report con-
firmed.

HILARY TERM
29. GEO. 2.

THE DEAN AND CHAPTER OF RIPPON *against* HINDE.

Yorkshire, 23d February 1756.

The dean and chapter of Rippon, in *Yorkshire*, are entitled to an annuity from the owner of the tithes of *Monkton, Eastwick, Westwick, and Eveson*.

THE bill stated, that *James the First*, by letters patent dated the eighth of *June*, in the fifth year of his reign, granted to the dean and chapter of the collegiate church of *Rippon*, and their successors for ever, one annuity or yearly rent of three hundred and forty-seven pounds to be issuing, *inter alia* in the said letters patent particularly mentioned, out of all the late prebend of *Moncketon*, otherwise *Monkton* (the lands, tenements, and hereditaments by the said letters patent given and granted to them only excepted), and payable yearly at *Michaelmas* and *Lady Day* by equal portions; that the tithes of grain, hay, and lambs, arising in *Monkton, Eastwick, Westwick, and Eveson*, were parcel of the said late prebend of *Monkton*, parcel of the possessions of the collegiate church of *Rippon*; that after making the said letters patent, his said majesty *King James the First* and his successors did grant all and singular the premises out of which the said annuity did issue to divers persons and their heirs; that the said premises had since been divided and subdivided amongst great numbers of persons, and been held and enjoyed subject to the said annuity payable to the plaintiffs; that about the year 1660, the said tithes of grain, hay, wool, and lamb arising in *Monkton, Eastwick, Westwick, and Eveson*, by virtue of letters patent from his said majesty and divers mesne conveyances, vested in *John Cooke*, who had held and enjoyed the same from the year 1660 to his death; that after his death, they came to his eldest son and heir at law, who had held the same to his death in the year 1741; that from the making of the said letters patent first mentioned to the year 1741, the plaintiffs had constantly and regularly received the said annuity by and out of the premises chargeable with the same, and are entitled to receive the same out of all or any part thereof; that the premises, out of which the same issues, having been granted by THE CROWN to divers persons, the plaintiffs had received the said annuity from the owners of the said premises in certain proportions; that from the year 1660 to 1741 the said plaintiffs had yearly received from the *Cooke's* family, in respect of the said tithes of *Monkton, &c.* nineteen pounds, nine shillings, and twopence, as for their part and proportion of the said annuity; that from the year 1741 to 1751, all the said annuity, except nineteen pounds, nine shillings, and twopence, had been paid to the plaintiffs by the several occupiers of the premises chargeable with the same; but that the defendants refused the payment of the same under several pretences. The bill therefore prayed, that the defendants might be decreed to pay the arrears and the growing payments thereof for the future to the plaintiffs.

The

THE DEAN AND
CHAPTER OF
RIPON
against
HINDE.

The defendant *Hinde* said, that he believed that the plaintiffs were entitled to the yearly rent of nineteen pounds, nine shillings, and twopence, issuing out of the great tithes arising within *Bishop Monkton*, &c. as aforesaid; and that to the year 1741, they had received the same from the owners of the said tithes; but whether they became entitled to such rent by letters patent he knew not; that about eighteen years ago he purchased of the *Cooke's* family the reversion in fee of the tithes of *Monkton* and *Eveslon*; that the said *J. Cooke* was also owner of the estate and tithes of *Eastwick* and *Westwick*, and that the defendant *Thompson* had purchased the same; but that he had never heard that the said *J. Cooke* was owner of the tithes of *Markinfield*. He further said, that he believed that the *Cooke* family, while they were in possession of the said tithes (except the tithes of *Markinfield*), did always pay the said rent to the plaintiffs and their predecessors; but that he knew not how they came to pay the tithes of *Markinfield*; that the estate and tithes of *Markinfield* and *Bishop Monkton* now belonged, and for many years past had belonged to the *Duke of Bridgewater*, or to some of his family. He further said, that he could not set forth the true yearly value of the tithes of *Eastwick*, *Westwick*, and *Markinfield*, but believed that they might be of equal value with those of *Bishop Monkton* and *Eveslon*, being sixty pounds. He further said, that he became entitled to the tithes of *Bishop Monkton* and *Eveslon* about April 1741; and he denied that he had pretended that the plaintiffs were not entitled to any rent out of the said tithes, or that he had made any agreement with the *Cook* family respecting the said tithes; but he insisted, that he ought only to pay his proportionable part of the rent of the said tithes of *Bishop Monkton* and *Eveslon*; and said, that he had always been ready and willing to pay such proportionable rent for the said tithes since he came into possession thereof.

The defendant *Thompson* said, that he knew not, but had heard, that by letters patent from *James the First* the plaintiffs were entitled to the yearly rent of nineteen pounds, nine shillings, and twopence, and that the same was issuing out of the great tithes arising within the same, or one of the townships of *Bishop Monkton*, *Eastwick*, *Markinfield*, and *Eveslon*; but that he believed the same was payable out of the tithes arising within *Bishop Monkton* only; and that the plaintiffs had, for many years, given receipts for the same, as issuing and payable out of *Bishop Monkton*, and that it is assessed or charged to the land tax and other rates thereip. He further said, that he believed the defendant *Hinde* had been, for ten years past, in possession of the tithes of *Bishop Monkton* and *Eveslon*, and also of *Eastwick* and *Westwick*; that all the said rent, upon sale of the said estates and tithes, had continued chargeable upon and to be paid from

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thenceforth out of the said tithes of *Bishop Monkton*; that after *Hinde* came into possession thereof, he actually paid the plaintiffs the said annual rent for a year and an half, who gave receipts to him for the same; that he afterwards, by lease and release dated the nineteenth and twentieth of *March* 1743, purchased of *J. Cooke* the said estates of *Eastwick* and *Westwick*, including all the tithes thereof, for six thousand one hundred pounds; and was then assured, that he purchased the same totally freed of all claims and demands in respect of the said yearly rent, and which he was assured was payable out of the tithes of *Bishop Monkton* only, and not from any other estate of *Mr. Cooke* or his ancestors; and that he had never heard, save by the bill, that any of the ancestors of the said *Cooke* were owners of or entitled to the tithes of *Markinfeld*: He therefore submitted to the Court, that he was not liable to the payment of any part of the said rent.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel for the plaintiffs;

The defendant *Hinde's* counsel objected, that the proprietors and owners of the other parts of the estate subject to the payment of the rent of nineteen pounds, nine shillings, and twopence, ought to have been made parties; but on hearing counsel in answer, the objection was over-ruled.

And on reading, on the plaintiff's behalf, the grant from *James the First*, in the fifth year of his reign, to the dean and chapter of *Rippon*, of the annual rent of three hundred and forty-seven pounds out of the lands therein mentioned; a copy of an indenture dated the twenty-eighth of *October* 1661, in the twentieth year of *King Charles the First*, between *Robert Dyke* and *Sir Charles Egerton*; an exhibition, being an abstract of *Mr. Cooke's* title to the estate of *Monkton*, with the superscription thereon, signed *W. Hinde*, the twenty-eighth of *April* 1734; the several depositions; the receipts beginning the eighteenth of *May* 1682, and ending 1742; the several entries in a book, being receipts; an assessment of the land tax for *Bishop Monkton*; an indenture dated the twenty-seventh of *May*, in the seventh year of *James the First*, between *Morris* and *Phillips* and *T. Dyke*; and on full debate of the matter;

THE COURT ordered the defendants to account before the deputy for the arrears of the rent of nineteen pounds, nine shillings, and twopence, demanded by the bill, with their costs of this suit to this time to be taxed. Subsequent costs and further directions to be reserved till after the report.

SUMNER

SUMNER *against* WIGGIN.

Yorkshire, 25th February 1756.

HILARY TERM
29. GEO. 2.

THE plaintiff *Sumner*, as rector of *Castleford*, in the county of *York*, and the plaintiff *Brown* as his lessee, claimed the tithe of the second crop of *clover hay* got from a parcel of inclosed ground within the parish, called the *Farr Carr Close*.

clover hay cut by the defendant on *Farr Carr Close* in the year 1753.

The rector of *Castleford*, in *Yorkshire*, demands tithes of a second crop of the year 1753.

The defendant admitted, that he was the occupier of *Farr Carr Close*; that in the year 1752 he had sowed the same with clover, and in 1753 had mowed it, and taken two crops of *clover hay* therefrom, without paying any tithe in kind for the same; and insisted, that every occupier of grounds within the said parish and rectory of *Castleford* (except of certain grounds called *Hardwick Roods* or *Pierpoint Tithe*, the *Demefne Lands*, *Halliavells*, and *Castleford Ings*) had immemorially paid, at *Christmas* yearly, or as soon after as demanded, to the owner of the said rectory, or his lessee, a *modus* of one shilling an acre of such ancient grounds, when used for meadow, and so in proportion for any greater or less quantity than an acre, for and in lieu and in full satisfaction of all manner of tithe hay arising from the said grounds and every part thereof, except as aforesaid; and that *clover hay* was considered as *hay*, and therefore included in the said *modus*.

The defendant admits that he cut a second crop; but says, there is a *modus* of 1s. a year payable for all lands when used as meadow, in lieu of all manner of tithe hay; and that *clover hay* is covered by such *modus*.

THE COURT, upon hearing counsel, and reading the answers, and the several proofs in the cause, and on full debate, ordered the defendant to account with the plaintiff *Brown* for the tithe of his second crop of *clover hay* grown upon the *Farr Carr Close* in 1753, and to pay the plaintiffs their costs of suit.

The defendant decreed to pay the tithe of the second crop of *clover hay*, with costs.

(a) An entry of a terrier in the parish register of the glebe lands, &c. of the rectory of *Castleford*, was offered to be read, and objected to, and refused.

BURTON *against* HOLDEN.

Suffolk, 26th February 1756.

HILARY TERM
29. GEO. 2.

THE bill stated, that the plaintiff, in *June* 1751, was instituted and inducted into the parish-church and rectory of *Herringswell*, in the county of *Suffolk*, and, as rector thereof, was entitled to all tithes of corn, grain, hay, wool, and all other great and small tithes arising in the parish, or to some composition in lieu thereof; that there were two manors in the parish adjoining to each other, called *Herringswell Farm*, or *Hall Farm*, and *Blunt's* on the *Sheep Walks*, and of the rabbits bred in the *Warren* belonging to *Hall's Farm*; but he is only entitled to the third part of the tithes of corn and grain of such lands belonging to the manor of *Herringswell* as were formerly parcel of the possessions of the abbey of *Bury Saint Edmunds*.

The rector of *Herringswell*, in *Suffolk*, is entitled to the small tithes of the parish, and to the tithes of the lambs and wool of the sheep fed on the *Sheep Walks*; but he is only entitled to the third part of the tithes of corn and grain of such lands belonging to the manor of *Herringswell* as were formerly parcel of the possessions of the abbey of *Bury Saint Edmunds*.
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Manor ; that both the said manors then belonged to the defendant *Holden* ; that he had then demised to the same the defendant *Trowell* ; and that the quantities of land therein were so blended together, that he could not distinguish the lands which belonged respectively to each manor ; that the former rectors had compounded with the owners of the said manor, and agreed to accept annually seventy-five pounds in lieu of the tithes thereof ; that in the year 1752 he attempted to take the tithes of the said lands, but the defendants prevented him from so doing, and set out only a thirtieth part of their whole crop instead of the tenth part thereof ; that the defendant *Trowell* in the said year ploughed and sowed the greater part of his lands, and had abundant crops of hay, corn, and grain therefrom, the tithes of which would have amounted to one hundred and fifty pounds ; that the defendants pretended that he was only entitled to the thirtieth sheaf or shock of corn, and not to any other tithes in kind. The bill therefore prayed, that the defendants might distinguish the respective lands belonging to each manor ; describe the boundaries thereof ; and come to an account with the plaintiff, and pay him what should appear to be due to him for all their tithes of corn, grain, and other titheable matters mentioned in the bill, or which they had on their said grounds.

The defendant *Trowell* admitted that the plaintiff was lawful rector of the parish, and entitled to such tithes as former rectors had received. He also admitted, that he occupied the *manor of Herringswell*, consisting of an house, garden, three hundred and forty-six acres of land, several sheep-walks, and a warren ; but denied that he had ever broke or ploughed up any part of the said sheep-walks. He said, that the rector was entitled to the tithes of wool and lambs fed and depastured on the said sheep-walks ; but that when such sheep-walks were broken up, and converted into tillage, the rector was only entitled to the thirtieth part of such corn or grain as arose therefrom ; that that was the rate of tithes paid by other landholders in the said manor ; and that the tithes of wool and lambs were not lessened on that account. He admitted, that former rectors had sometimes agreed with the tenants of the said manor for a sum of money in lieu of all tithes ; but said, that such agreement had been made upon a calculation that the rector was only entitled to the thirtieth part of corn and grain within the manor, and on the lands and demesnes thereto belonging. He also admitted, that in the year 1752 he had taken his corn and grain off the said lands, after setting out and leaving the thirtieth part thereof for the use of the rector ; that of all the lands in the said parish, except such lands and the demesnes as belonged to *Hall Farm*, he had set out and left for the plaintiff a tenth part of his corn and grain. He also said, that in the said year he had occupied six hundred

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acres, besides the meadow, pasture, sheep-walks; and warren; and he set out an account of his titheable matters and things, except of hay, wool, and lambs, which he insisted he had paid in kind; and averred, that he always had been, and then was ready to pay the same. He further stated, that the manor of *Herringswell* and the demesnes thereof formerly belonged to, and were part of the possessions of the dissolved monastery of *Bury Saint Edmunds*, one of the greater monasteries; that the abbot and convent, long before, until, and at the dissolution thereof in the thirty-first year of *Henry the Eighth*, were also seised of two parts in three of the tithes of corn and grain arising within such manor and the demesnes; that the said two parts in three of the tithes became vested in the king at the dissolution; that he being so seised, granted the same to *T. Audley, Knt.* to hold to him and his heirs, &c.; that the same was now vested in the defendant *Holden*, the present lord of the manor; and that he was thereby entitled to such two thirds, and the rector only to the thirtieth sheaf of corn and grain: and he set forth an account of all the lands and demesnes belonging to the said *Hall Farm*, and the quantities of acres he had so sown with corn and grain in that year; and said, that one hundred and ninety six acres were part of the said manor, but that he knew not to what manor his other lands belonged. He further said, that he did not know whether *the Warren* was titheable; but that he had heard, that four pounds had been paid in lieu thereof; and that he had always been willing, and was then ready to pay the same to the plaintiff, and also whatever should appear to be due for any of the titheable matters in the said year.

The defendant *Holden* admitted that the plaintiff was rector, and entitled to all tithes, both great and small, except those arising out of *Herringswell*; and he said, that the said manor had been part of the possessions of the said dissolved monastery; that *Henry the Eighth* became seised thereof, and of two third parts of the tithes of corn and grain; that the same was afterwards granted to *J. Audley, Knt.* and was then vested in him, who was the present lord or owner thereof; that he was entitled to two third parts of the tithes arising therein; and that the rector was only entitled to a thirtieth part thereof. He further stated, that there had been two manors in the parish, called *Herringswell* and *Blunt's Moor*; that they had both belonged to the said owner for eighty years past; and that he then owned the same; that the defendant *Trowell* was his tenant for *Hall Farm*; and he described the said lands, and the lands in *Blunt's Manor*. He admitted that the plaintiff was entitled to the tenth part of wool and lambs arising from sheep fed and depastured on the sheep-walks; but insisted that he, the defendant, was entitled to the thirtieth part of such corn and grain. He also said, that he believed former rectors had com-
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pounded with the tenants, but that they had never paid so much as in the bill is suggested, and that such compositions had been made upon a calculation that the rector was entitled to no more than a thirtieth part of the corn and grain : and he denied that he had in his custody or power any copies or original papers touching the payment of tithes in kind in the said parish without any mention therein of the thirtieth sheaf only being paid.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading, on behalf of the defendants, an exemplification of a grant of *Henry the Eighth*, dated the twenty-fourth of *April*, in the thirty-fourth year of his reign, to *Sir J. Audley*, of the manor of *Herringswell*, lately parcel of the possessions of the monastery of *Saint Edmund's Bury* ; the several proofs taken in the cause ; another grant from the abbot and convent of *Bury Saint Edmunds* to the hospital of *Saint Saviour*, of two portions of the *Demefne Lands* of *Herringswell* in the reign of *King John* ; and on full debate of the matter ;

THE COURT declared, that the plaintiff was entitled to one third of the tithe of corn and grain yearly arising, growing, or renewing, within the manor of *Herringswell*, otherwise *Hall Farm*, mentioned in the pleadings, and no more ; AND ORDERED *W. Trowell* to account with the plaintiff for one third part of the value of the tithe of his corn and grain which he had growing within the said manor during the time demanded by the bill, but without costs ; and that the bill be dismissed as to the demand of the other two third parts, but without costs.

THE COURT further ordered the defendant to account for the small tithes demanded by the bill ; and *Trowell* to account for the tithe of barley grown on the three acres, part of the nine acres lying within the manor of *Blunt* mentioned in the pleadings, without prejudice to the defendant *Holden*, and to pay the plaintiff five pounds for the tithe of his rabbits, by agreement of the parties, during the time demanded by the bill ; and by consent of all parties, the said defendants were to pay the plaintiff ten pounds towards his costs of this suit.

EASTER TERM
29. GEO. 2.

PRYOR against SHORE.

Somersetshire, 20th May 1756.

The lessee of the rectory of *Stoke under Hamden*, in *Somersetshire*, claims the tithes of *Father-ton Bridge Mill*, of garden stuff, apples, poultry, and *Easter* offerings.

THE bill stated, that *J. Rodbard*, deceased, being seised of the rectory impropriate of *Stoke under Hamden*, in the county of *Somerset*, together with all tithes, offerings, *moduses*, and other things to the said rectory belonging, by indenture, dated the third of *April* 1735, demised to *John Pryor* and the plaintiff all

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and singular the said premises for four years; that after the expiration of the said term, he demised the same to them for nine years; that in the month of *March* 1744 the said *J. Redbard* died, and left by his will the said premises to his son; that his son became seised thereof, and by indenture, dated the twenty-third of *May* 1751, demised the same to them for five years; that by virtue of the said leases, they became entitled to all the great and small tithes arising in the parish from the third of *April* 1735 to the twenty-third of *April* 1750; that *John Pryor* died about the twenty-fourth of *December* 1749; that the plaintiff, as surviving lessee, was become entitled to all such tithes, *moduses*, matters, and things, which ought to have been set out and paid to him during the time aforesaid; and that he was likewise become entitled to the same from the twenty-third of *May* to the filing of his bill. The bill then stated, that the defendant had occupied and enjoyed an ancient corn mill, called *Pether-ton Bridge Mill*, together with a garden and orchard in the parish during all that time, and had in each year garden stuff, apples, cocks, hens, and other fowls, and was bound to pay in each of the said years, eightpence for oblations, obventions, and offerings, which amounted in the whole to five shillings and tenpence a-year; that the occupiers of the said ancient mills from time immemorial had been used and accustomed to pay yearly one pound, six shillings, and eightpence, at *Easter*, to such persons as were from time to time seised of or entitled to the said rectory, their tenants or farmers, as a *modus* in lieu of the tithes thereof; that the said several tithes, *moduses*, and offerings became due and payable in each of the said years to them, as lessees; but that the defendant had neglected, from the year 1737, to pay the same to them, or to make any satisfaction for the same. The bill therefore prayed, that the defendant might set forth the several quantities and numbers of apples, garden stuff, and fowls, which he had gathered, had, and bred in each of the said years; what the tithes thereof would have been worth had they been set out and paid during each year; and that he might come to an account for the same, and pay the plaintiff likewise for the offerings and *modus*, and might be decreed to pay him what should be found due on such account.

The defendant said, that he believed *Redbard* was seised of the rectory, and had granted the said leases; that the lessee might be entitled to all the tithes and other titheable matters yearly arising therein; and that the plaintiff having survived his brother was now entitled to the same. He stated, that he was, by copy of court roll of the manor of *Stoke under Hamden*, granted by *William the Third*, dated the twentieth of *March* 1695, seised for his life of the said ancient corn mill, called *Pether-ton Bridge*

The defendant says, that *Pether-ton Bridge Mill* is an ancient mill in the manor of *Stoke*; that all the inhabitants are bound to grind their corn thereat; tithes thereof;

and that there is a *modus* of 2l. 6s. 8d. for the

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that 4d. is payable for husband and wife only for *Easter* offerings; 2d. for garden stuff; 4d. for poultry; and 1d. a hogthead for cyder, in lieu of tithe apples;

that the plaintiff refused to grind at the mill, and therefore that he refused to pay him the *modus*; but that on the balance he owes him 12s.;

that since the said balance was struck, the tithes amounted to 1l. 19s. 6d. and that he is willing to pay the same, deducting the 12s.

The representative of a deceased lessee of the rectory ordered to be made a party to the bill.

Mill, with a garden and orchard; that the same were parcel of the *Demefnes* of the said manor; and that the said manor then belonged to THE PRINCE OF WALES; that he had ever since 1737 occupied and possessed and still did occupy and possess the said mill, orchard, and garden; that by the immemorial custom of the manor, all the copyhold tenants living and residing in the manor were bound to grind their corn, malt, and all other sorts of grain, used and spent in or by themselves or their several families, or on their respective estates within the said manor, at the said manor mill, and no where else; and that, by the like custom, there was payable yearly at *Easter*, by the owners or occupiers of the mill, to the impropiators of the rectory, their farmers or lessees, one pound, six shillings, and eightpence, in lieu of the several tithes of the mill; that by the like custom there were also due and payable as aforesaid, fourpence for *Easter* offerings (being twopence each for the defendant and his wife), and no more; twopence, and no more, for the garden; fourpence, and no more, for the fowls; and one shilling, and no more, for a hogthead for cyder, in lieu of tithes of the apples of the orchard; that he had constantly paid the said several sums, and also the said one pound, six shillings, and eightpence, until about twelve years since, when the plaintiff refused to comply with the custom of the manor, and to grind his corn and grain at the mill; and therefore he had refused to pay the said customary sums; but that there had been several accounts since settled between them, and that the plaintiff was indebted to him twelve shillings. He also said, that apprehending such customary sums as aforesaid had been immemorially paid by the occupiers of the said mill, orchard, and garden, to the impropiators of the said rectory, their farmers or lessees, he did not, during any of the said years, take any account of the profits of the mill, or of the garden stuff, but from time to time had accounted for the tithes of the orchard or apples at the rate of one shilling a hogthead of cyder. He also said, that at *Easter* last there were due to the plaintiff, on account of the said customary payments, from the state of the last account, one pound six shillings, and eightpence; for the tithes of the said mill; fourpence for offerings for the defendant and his wife; twopence for garden stuff; fourpence for fowls; and twelve shillings for twelve hogheads of cyder; amounting to one pound, nineteen shillings, and sixpence; which he was always ready to pay, deducting the twelve shillings; but that the plaintiff had never demanded the same.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the twenty-seventh of *February* last, when it was ordered, that it should stand over, with liberty to the plaintiff to amend his bill, by making the said *J. Pryor's* representative a party, on paying of the sum of five pounds, the costs of the day,

to the defendant : and the bill being amended, and *Alice Pryor* made a party to the same, she, by her answer thereto, admitted that the plaintiff and her husband in his life-time, had, under the several demises, become entitled to all the great and small tithes and offerings in the said parish ; and that the plaintiff was then, as surviving lessee of the said rectory, solely entitled thereto ; that she was a stranger to the other matters in the bill, and submitted her interest therein to the court.

The cause came on again ; and upon hearing counsel fully ; and reading the answer and proofs taken in the cause ;

THE COURT ordered the defendant to account for *Easter* offerings for himself and family at the rate of twopence a head from *Lady Day* 1741 (except from *Lady Day* 1750 to *Lady Day* 1751, for which time the plaintiff had no lease of the tithes) ; for the value of the tithes of the garden stuff and apples which he had gathered from the orchard and garden ; for the value of the cocks, hens, and other fowls, which he bred within the time aforesaid (except as aforesaid) ; and for the annual *modus* of one pound, six shillings, and eightpence, for the ancient mill ; that what should be found due upon the said account to the time of the death of *J. Pryor* be equally divided and paid by the defendant to the plaintiff and the defendant *Alice Pryor* ; and what should be found due after the death of *J. Pryor* be paid by the defendant to the plaintiff. The consideration of costs, and further directions, to be reserved till after the report.

The *modus* of 11. 6s. 8d. for the mill and the 2d. a head for *Easter* offerings allowed ; the tithes of garden stuff, apples, and poultry, decreed in kind.

JOHNSON *against* MANN.

Lincolnshire, 27th June 1756.

TRIN. TERM,
29. GEO. 2.

THE bill stated, that the parish of *Spalding*, in the county of *Lincoln*, is a rectory impropriate, and a large and extensive parish, in which there are arable, meadow, and pasture lands, and great and extensive commons, wherein the inhabitants residing in the parish have a *right of common* ; that, during the time whereof the memory of man is not to the contrary, there had been yearly and accustomarily tithes paid within the said parish to the owners of the said rectory, their farmers or lessees, for the time being, in manner as in the bill is mentioned ; that his late majesty *James the First* being, in right of his crown, seised of the said rectory and tithes, did, by his letters patent under his great seal, dated the eighth of *April*, in the sixth year of his reign, in consideration of the rents and services therein mentioned, grant and convey the said rectory and tithes to *F. Philips* and *R. Moure*, their heirs and assigns, for ever, to be holden of his said majesty's manor of *East Greenwich*, in the county of *Kent*, in free and common socage, and not *in capite*, or by knight's service, reserving to his majesty and his successors as

The impropriator of *Spalding*, in *Lincolnshire*, is entitled to the tithes of the *Inlands* in the said parish, and of the *Fens* and *Commons* which were formerly parcel of the possessions of the abbey of *Spalding*.

is

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is therein mentioned; that the said rectory and tithes, by several mesne conveyances, became vested in *M. Johnson, &c.* as trustees or feoffees thereof; that being so seised, they, by indenture dated the twenty-second of *March* 1747, appointed the plaintiff to be minister and perpetual curate of the said parish-church and rectory; and being duly licensed so to be by the then lord bishop of *Lincoln*, he became thereby entitled to the tithes, both great and small, arising in the said parish, or the titheable places thereof, in kind, or to some rate, composition, sum or sums of money in lieu thereof (except those arising in the hamlet of *Cowbitt*, in the said parish), and to all offerings, oblations, dues, and other duties in the bill mentioned; that the defendant *Mann* and others had yearly, since the twenty-second of *March* 1747, severally held and occupied arable, meadow, and pasture grounds lying and being in the said parish and the titheable places thereof, whereon, and upon the several commons lying and being therein, they had yearly the several titheable matters in the bill mentioned, the tithes of which they ought to have paid to the plaintiff in kind, or made him some recompence for the same, according to the several rates and sums in the bill mentioned, but which they had, under divers pretences, refused to do; that the defendant *Ives* set up, or pretended to claim, some right or title to the said tithes; and that therefore they ought not to pay or satisfy him for the same. The bill therefore prayed, that the defendant *Ives* might set forth, whether he claimed any and what right or title to the said tithes; and that the other defendants might be severally decreed to account with and satisfy the plaintiff for the same.

The defendant *Mann* and others said, that the parish of *Spalding* was and is a rectory impropriate; that it is large and extensive; that there are therein great quantities of arable, meadow, and pasture lands, and great and extensive commons, whereon the inhabitants of the said parish have *right of common*; and that there had been yearly and customarily such tithes paid to the owners of the said rectory, or their lessees, for the inlands in the said parish, either in kind, or according to the several rates as in their answers are mentioned; but that no tithes, or customary payments in lieu of tithes, had been usually paid for the several fens or commons in the said parish for the feeding and depasturing of any cattle, of what nature or kind soever, fed or depastured thereon. They further said, that *James the First* might make such grant of the rectory and tithes, and that such other conveyances might have been made thereof, as in the bill are stated. They also admitted, that the plaintiff had been minister and perpetual curate of the said parish; and that he was duly licensed thereto, and by virtue thereof legally entitled to all tithes, both great and small, arising

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in the several inlands in the parish in kind, or to the several rates or compositions in lieu thereof, in the answers mentioned. They further said, that they had severally fed and depastured on the said fens and commons, during the time in their answers mentioned, several cows and sheep; but that all persons who lived and resided in the said parish had a right to keep and depasture all sorts of cattle, without stint, on the said fens and commons, which were appendant and belonging to the abbey or monastery of *Spalding* at the dissolution thereof, and held by such abbey free and discharged from the payment of tithes; that by virtue of the statute of 31. *Hen.* 8. the said abbey being one of the greater abbeys, no tithes were payable for the said fens and commons to any person whatsoever, but the same were, by the said statute or by other ways and means, discharged from the payment of tithes, nor had any been paid to any person or persons whatsoever since the time of the said dissolution, excepting in some few instances of late years, by fraud or misrepresentation; and that therefore they ought not to account with or satisfy the plaintiff for the tithes of the feeding or depasturing of their cows or of any other cattle whatsoever, on the said fens or commons, or any rates or compositions for the same.

The defendant *Ives* said, that he had been, for six years last past, lessee of the said rectory and tithes under the plaintiff, but was willing that the other defendants should account with and satisfy the plaintiff for their several tithes, and that such payment should be a full discharge to them for the same.

The plaintiff replied to all the defendants' answers, except *Ives*; and they rejoined; and witnesses were examined; and upon hearing counsel several days;

The plaintiff's counsel objected to the exemption mentioned in the defendants answer, that the same was not sufficient to discharge the defendants from the payment of their tithes arising or renewing on the said fens and commons.

And THE COURT, after hearing counsel for the defendants the occupiers, declared, that the exemption set up and insisted on by the defendants was not sufficient to discharge them from the payment of their tithes arising or renewing on the said fens or commons; and thereupon ordered the defendants the occupiers to account for the values of their several tithes arising or renewing on the said fens or commons, and likewise upon the inlands in their respective occupations in the parish of *Spalding*, or the titheable places thereof, from the time of the said lease, together with the plaintiff's costs, to be taxed; such payment to be a full discharge to the defendants for their said tithes against the defendant *Ives*, who is hereby dismissed this court with costs, according to the course of the court, which are to be repaid to the plaintiff by the other defendants.

JOHNSON
against
MANN.

The deputy made his report, dated the twenty-first of February 1758; and on the twenty-fifth it was ratified and confirmed with subsequent costs, and the defendants ordered to pay the several sums reported due for their tithes.

PARKER, Chief Baron.
LEGGE, Baron.

MICH. TERM,
30. GEO. 2.

ROOKE, Widow, against HORNE.

Kent, 22d November 1756.

The owner of the scite and mansion-house of the hospital of *St. Lawrence*, in the parish of *St. Paul*, near the city of *Canterbury*, is entitled to the great and small tithes of two parcels of ground, called *the Upper Hoath* and *the Lower Hoath*, parcel of the manor of *Barton*.

THE bill stated, that the plaintiff had been, for ten years past, seised in fee simple of, or otherwise lawfully entitled, in her own right, as owner and proprietor to, the scite and mansion-house of the late dissolved hospital of *Saint Lawrence*, in the parish of *Saint Paul*, near the city of *Canterbury*, and the messuages, lands, tenths, rents, services, and other hereditaments to the said hospital belonging, lying in the city of *Canterbury*, and in the county of the same city, and in *Barton*, otherwise *Longport Bredyn*, and elsewhere in the county of *Kent*, and also to the tithes of wheat, corn, grain, hay, wool, hemp, lambs, trefoil, clover, rye grass, and other grass made into hay, and the seeds thereof, and the depasturage, feeding, and agistment of cattle, and all other tithes whatsoever, both great and small, oblations, and offerings, of whatsoever kind or sort, arising in the said parish of *Saint Paul*, belonging to the parsonage of *Saint Lawrence* aforesaid, or within the tithery thereof; that she, and her farmers or lessees, had, during the said time, received, or of right ought to have received, the tithes aforesaid, or some composition in lieu thereof; that the defendant, for four years past, had occupied a farm in the said parish, and certain lands called *the Hoath*, containing forty acres, parcel of the said farm; that the said lands are parcel of the manor of *Barton*; that the defendant had, in each of the said years, the several titheable matters and things demanded by the bill arising on *the Hoath*, the tithes of which he refused to set out or to pay, pretending, that the dean and chapter of *Canterbury* were entitled to the great tithes, and the vicar to the small tithes of *the Hoath*, but that the contrary is true, and that the tithes of all the said lands were within the bounds of the plaintiff's tithery, as in the bill stated: and she set forth a terrier made in the year 1678; and prayed, that the defendant might be compelled to account for and pay the tithes of the said lands, called *the Hoath*; that the dean and chapter might set forth a particular of lands to the tithes whereof they claimed to be entitled in right of the said rectory; and that the plaintiff's right might be established by the decree of this court.

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against
HORNE.

The defendant *Horne* said, that it might be true that the plaintiff had been, for several years past, seised of the scite and mansion-house of the hospital of *Saint Lawrence*, and also of the tithes of some lands lying in the said parish within the tithery of *Saint Lawrence*, and had received such tithes, but of what particular lands he knew not. He also said, that he occupied a farm, and that there was a piece of land belonging thereto, called *the Upper Hoath*, containing thirteen acres, and two other pieces of land, called *the Lower Hoath*, containing twenty-one acres; that the same were formerly one piece: and he described the boundaries thereof, and set forth the quantities and values of the titheable matters which had arisen therefrom. He also said, that he had never set out any tithes upon *the Lower Hoath*, because he apprehended the plaintiff was not entitled thereto; for that the yearly sum of fifteen shillings had been, for several years, paid by the occupiers of *the Upper Hoath* to the owners of the tithery of *Saint Lawrence*, in lieu of the tithes thereof; and he averred, that he had tendered the same to the plaintiff, but that she had refused to receive the said tender: and he insisted, that the great tithes of *the Upper Hoath*, and of *the Lower Hoath*, belonged to the dean and chapter of *Canterbury*, as rectors of the parish of *Saint Paul*; that the small tithes of the same pieces of land belonged to the vicar of the parish; that no part of the tithes growing thereon belonged to the plaintiff; and that if the tithes thereof had ever been paid to the plaintiff or her lessees, such payments had been made through ignorance, and did not preclude him from controverting her claim to the said tithes. He denied that there had been, to his knowledge, any disputes or suits touching the boundaries of the tithery of *Saint Lawrence*, or of the tithery of the rectory of *Saint Paul*, or that it had been agreed that the terrier stated in the bill should be taken; or that *the Lower Hoath* was within the plaintiff's tithery; or that she was entitled to any tithes in kind upon *the Upper Hoath*: and he said, that he had offered to pay her the fifteen shillings in lieu of the tithes growing upon *the Upper Hoath*, under a conception that it was due as an ancient rate in lieu of tithes; but that upon further investigation he was convinced, that *the Upper Hoath* was not within the tithery. He admitted, that the plaintiff had several times demanded tithes in kind of him for both *the Upper Hoath* and *the Lower Hoath*; and that he had refused to pay the same; but he denied that the said farm, or the said *Hoaths*, were to his knowledge parcel of the manor of *Barton*, or that he had any deed relating to *the Hoaths*, except some receipts for the said fifteen shillings in lieu of the tithes of *the Upper Hoath*: and he set forth some receipts, and the purport of his lease from the dean and chapter dated the twenty-sixth of November 1750.

The defendant *Lamprey*, the vicar, confessed, that he had heard that the plaintiff was seised of the said scite, and also of some tithes

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against
HORN

belonging thereto, in the parish of *Saint Paul*; and that she and her lessees had taken tithes arising in the said tithery, or some composition in lieu thereof; but could not tell what tithes in particular she had so received. He said, that he had never heard whether the said lands called *the Hoaths* were lying within the plaintiff's tithery of *Saint Lawrence*, or what number of acres the said lands contained. He also said, that he did not pretend that the great tithes growing on the said *Hoath* belonged to the dean and chapter of *Canterbury*, as rectors of the parish of *Saint Paul*; but insisted that he, as vicar of the parish of *Saint Paul*, was entitled to all manner of tithes growing upon *the Hoaths*, or upon the said farm, by virtue of the endowment of the vicarage of the said parish, except such tithes as were granted to the hospital of *Saint Lawrence*, and except the tithes of corn, grain, and pease. He said, that he had never received any small tithes for *the Hoaths*, or for the said farm, at any time since he had been vicar, because when he claimed such tithes, the then occupier of the farm insisted that he was entitled to the great and small tithes thereof, by virtue of a lease granted to him from the dean and chapter; and refused to pay the tithes of the said farm; and that the present defendant had refused to pay the same on account of this suit.

The dean and chapter of *Canterbury* said, that they believed that the plaintiff was possessed of the site of the mansion-house, &c. and of certain lands and tithes therewith granted, called *the Tithery of Saint Lawrence*; but what those tithes or lands in particular were they knew not, nor what she had received as belonging thereto. They also said, that they did not believe that the plaintiff was entitled to any lands within the parish of *Saint Paul* on the left hand side of the way leading from *Canterbury* to *Dover*, except the tithes of corn and pease on the demised lands formerly belonging to the abbot and convent of *Saint Austin*, lying near *Longport*; but that the vicar of the said parish was entitled to all small tithes lying in that part. They insisted, that all great tithes within the parish of *Saint Paul*, except such tithes as were granted to the hospital of *Saint Lawrence*, were part of the rectory of *Saint Paul*, of which they were seised; and that they and their lessees were entitled to all the great tithes thereof, except as aforesaid. They further said, that they were lawfully and quietly in possession of the said rectory; that it was granted to the deanery and chapter by THE CROWN; that they did not know the particular lands or the number of acres that were within the bounds of the rectory; but that the great tithes of all lands lying within the said parish which were not within the bounds of the tithery of *Saint Lawrence* do belong to them, as rectors of the said rectory; and that they had always since the said grant from the crown granted the great tithes, and received for the same an annual rent; but whether the lessees had taken the tithes in kind, or how

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HORNE.

how they had taken the same, they could not tell. They further said, that the defendant *Horne* was lessee of the rectory, and that he occupied *the Hoath*, containing forty acres, as tenant thereof; but whether it was ever parcel of the *manor of Barton* they knew not; but that they did not believe that the tithes of *the Hoath* were ever granted to the said hospital, or that they were part of the tithery of *Saint Lawrence*. They admitted, that some disputes had happened with the plaintiff's family and the dean and chapter about the said tithes; but how they ended they knew not, nor had they any knowledge of the terrier stated in the bill. They further said, that they had in their custody an indented piece of parchment, dated in the year 1678, which contained the purport of the terrier stated in the bill; but that it was not signed, sealed, or witnessed, nor was it said to be made between the dean and chapter of the one part, and the owners of the tithery of *Saint Lawrence* of the other part; and therefore they believed that it was not an approved terrier. They also said, that they having been, by grant from the crown, for many years past seised of the said rectory and the great tithes (except those granted to the said hospital), they esteemed this a sufficient rule for them, as lessees of the same, by which to ascertain what tithes belonged to the rectory; and that they could not otherwise set them forth.

The plaintiff filed a special replication, and thereby waived any account or satisfaction touching the tithes arising in any place or places within the tithery of *Saint Lawrence*, except the lands called *the Hoaths*; and the defendants rejoined; and witnesses were examined on the part of the plaintiff only; and upon hearing counsel for all parties; and reading the answer of the defendant *Horne*; and the proofs taken in the cause; an instrument indented, produced by the dean and chapter in obedience to an order of this court, purporting to be a terrier or terrar indented of all the tithes and portion of tithes within the parish of *Saint Paul*, near the said city of *Canterbury*, belonging to the rectory of the said parish, not being any part of the *manor of Barton*, or of the tithes of *Saint Lawrence Parsonage*, the one part of which terrier was said to be in the custody of the dean and chapter, and the other part to remain with the owner of *Saint Lawrence Parsonage*, dated 1678, and not signed; a like terrier produced by the plaintiff, indented, and tallying exactly with the above instrument, dated also 1678, and not signed, they appearing to be exact duplicates of each other; and upon full debate of the matter;

THE COURT declared, that the plaintiff was well entitled to the tithes of the lands in the pleadings mentioned, called *the Upper Hoath* and *Lower Hoath*, they having been heretofore one piece of land, called *the Oath*; and that her right to the said tithes be established by the authority of this court against the dean and

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chapter of *Canterbury* with costs, and against *Lamprey* the vicar without costs.

THE COURT accordingly ordered the defendant *Horne* to account with the plaintiff for the value of the several titheable matters and things which had arisen on the said lands called the *Upper Hoath* and the *Lower Hoath* during the time demanded by the bill, with costs to be taxed (a).

T. PARKER.
RICH. ADAMS.

(a) *Mrs. Rooke*, the plaintiff in the above cause, also filed her bill against one *Austen* for the tithes of a garden, orchard, and four acres of hop ground in his possession, situate within the tithery of *Saint Lawrence*, in the parish of *Saint Paul*, as above stated, and praying that her right thereto might be established against the vicar of *Saint Paul* and the dean and chapter of *Canterbury*. The defendants said, that these lands lay on the right side of the road leading from *Canterbury* to *Dover*, and that they were not within the tithery of *Saint Lawrence*. The Court, after reading the terriers as in the above cause, directed an issue to try, "Whether

" the plaintiff was entitled to the tithes
" of the four acres of land demanded by
" the bill, or of any and what part of
" the said lands?" But the vicar and the dean and chapter being thoroughly satisfied of the plaintiff's right thereto, and desirous that it should be established, it was by their consent, and by an order dated the 29th of June 1757, ordered, that the said issue should be taken *pro confesso*; and on the 17th of November 1757, on the cause coming on on the equity reserved, THE COURT ordered the plaintiff's right to the tithes of the said four acres to be established, and the defendant *Austen* to pay her the tithes thereof.

EASTER TERM,
30. GEO. 2.

GILLS against HORREX.

Suffolk, 16th May 1757.

The bill states, that in the parish of *Whepfled*, in *Suffolk*, there are certain lands tithe free, and others that pay tithe in moieties;

that there is a *modus* of 4d. an acre in lieu of tithe hay, except of the said lands;

that the whole of every tenth day's cheese made from the 1st of May to the 1st of August shall be paid to the rector, in lieu of tithe milk of the whole year.

THE plaintiff, on behalf of himself and certain other owners and occupiers of lands in the parish of *Whepfled*, in the county of *Suffolk*, stated, that there were in the said parish divers lands and grounds exempted from the payment of tithes, or any thing in lieu thereof, to the rector, and other lands and grounds, the tithes whereof are paid in equal moieties to the rector of *Hawksted* and to the rector of *Whepfled*; that there is an ancient *modus* in the parish of *Whepfled* of fourpence for every acre of grass cut and made into hay payable within the said parish and the titheable places thereof, to the rector, in lieu of the tithes of all grass cut and made into hay (except from the said tithe free lands and the said other lands for which tithe is paid in moieties as aforesaid); that by a like ancient custom, all the cheese that is made every tenth day, by any person keeping a cow or cows in the parish, except as aforesaid, from the first of May to the first of August yearly, is to be paid and delivered, at every such person's house, upon the first of August, or so soon after as demanded by the rector of the parish, in lieu of tithe milk within the same year; and that all the milk yielded by such cow or cows of the evening of the ninth day, and on the morning of the tenth day, the milk of the evening of the ninth day being first once

fleeted or skimmed, ought fairly, and without fraud, to be used and employed in making such tithe cheese, which is commonly called *two meal cheese*. The bill therefore prayed, that issues might be directed to try the validity of the said *modus*, if the same were not admitted by the defendant; and that the same might be established by the decree of this court.

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against
HORREX.

The defendant, the rector of the parish, denied that there were any such customs or *modus* as mentioned in the bill; but admitted, that the owners of *Low Meadow Grounds* had used to pay fourpence an acre for the same, in lieu of tithes; and insisted, that there were some lands in the parish, the tithe hay of which was paid in kind; that there were other lands which paid a different *modus* from that alledged in the bill; and that the tithes of clover growing on the arable lands in the parish cut or made into hay or stover had always been paid in kind.

The rector says, there is no such *modus* as to milk; that the 4d. an acre is confined to *Low Meadow Grounds*; and that the tithes of clover and other artificial grasses, when made into hay, are to be paid in kind.

The plaintiff replied; the defendant rejoined; and witnesses were examined on both sides; and the cause came on to be heard on the thirteenth of *May* 1756, when

The cause heard.

The defendants counsel objected to the legality of the *modus* as set forth in the bill, because the lands which were said to be exempt from the payment of tithes, and those which were said to pay tithes in moiety, were not particularly set forth, and because the bill only stated that fourpence an acre was payable for all grass cut and made into hay, without saying, "for a greater or less quantity than an acre."

The *modus* adjudged to be sufficiently set forth, though the exempted lands are not particularized, or the 4d. declared to be apportionable "for a greater or less quantity than an acre."

The cause was adjourned to a future day; when it was again ordered to stand over for the opinion of the Court as to the said objections. On the sixteenth of *May* 1757,

THE BARONS declared their opinions, that the said *modus* were sufficiently set forth in the said bill; and upon hearing counsel, and reading the depositions taken on both sides, ordered them to be tried by a special jury.

Issues directed to try the validity of the *modus*.

A trial was accordingly had, and a verdict given for the plaintiff upon both the issues; but, by consent of the counsel on both sides at the said trial, the *posse* was indorsed as follows, viz. "that there was no *modus* for clover or other artificial grass cut and made into hay within the said parish of *Whipstod*."

A verdict in favour of the *modus*; but that the 4d. an acre does not extend to hay made of artificial grasses.

The cause came on the twenty-seventh of *April* 1758 upon the equity reserved; and upon hearing counsel upon both sides, the said *modus* before set forth were, by consent, ordered to be paid and decreed to be payable, in lieu of lactage and tithe hay; and that the same be confirmed and established (except as to the

The *modus* established, except as to the hay of artificial grasses and the hay arising on *Whipstod Field*.

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tithe of clover and other artificial grafs, and also as to the closes called *Whepsted Field* or *Cages Lay*), without costs on either side.

TRIN. TERM,
31. GEO. 2.

GREGOR *against* NICHOLAS.

Cornwall, 16th June 1757.

The particular mode of setting out the tithe of corn and grain in the tenement of *Tregitbo*, in the parish of *Manackan*, in *Cornwall*, established.

THE bill stated, that the plaintiff was, in the year 1753, and for many years before, had been, seised in fee of the impropriate rectory of *Manackan*, in the county of *Cornwall*, and of all the tithes of corn, grain, and other great and predial tithes, arising in the parish, except the tithes of certain lands and tenements therein, called *Haloose*, part of the tenement of *Treath*, a small part of the tenement of *Treworkey Vean*, and the glebe lands belonging to the vicar of the parish, and particularly to the tithes of corn and grain arising out of the tenement of *Tregitbo*, and the lands thereunto belonging in *Manackan*; that the defendant had, for many years past, been seised in fee, or otherwise, of the said tenement of *Tregitbo*, and the lands thereunto belonging; that he had growing thereon wheat and barley, which he cut, reaped, and carried away, without laying out any tithes for the same; that the usual and accustomed manner of setting out the tithes of barley and other corn growing in the parish, and particularly within *Tregitbo*, is for the farmer or occupier of the lands to cut and reap the corn, and soon after to bind the same into sheaves, and then to put and make up the sheaves so bound into mows or cocks on the lands where the corn grew, there to remain for a reasonable time, until such corn shall be in a proper plight and condition, and be fit to be carried or put into the barn, or other convenient place for preserving the same for use; that when the said mows or cocks of corn are so in condition, and fit to be carried in, and at the time of carrying off the same from the ground where the same grew and was reaped, every tenth sheaf thereof is, and ought to be set out, as and for the tithe of such corn; and that the defendant had always used the said method of tithing until three years ago; that in 1753 he made use of such like method of setting out the tithes of his wheat, and ought to have so done as to his barley; but that instead of so doing, he set out no tithes at all thereof, but threw out the tenth sheaf as soon as the same was reaped and bound into sheaves, and left the same single and prostrate on the ground where the same grew, and carried away the remaining nine parts of the said sheaves into or upon other parts of the said tenement, and there made and put the same into mows or cocks, and so made them up into ricks, without setting out such tithes of the same; and that the said sheaves so thrown and left single on the ground were spoiled. The bill therefore prayed, that the defendant might account for the full value of all such tithes of corn and grain, and

and great and predial tithes, as he had not duly set out and paid ; for all titheable matters held and occupied by him within the said parish and rectory, and particularly for such tithes of corn and grain as arose and became due in, upon, or out of the said tenement of *Tregitho* in 1753 ; that all future tithes, as well of barley as of all other corn and grain growing and renewing in and upon the said tenement of *Tregitho* might be set out in the usual manner ; that the defendant, his heirs and assigns, and all other persons occupiers of the said tenement, might set out the same accordingly ; and that the said method of setting out tithes might be established, and the plaintiff quieted in the receipt and possession thereof.

GRYGOR
against
NICHOLAS.

The defendant admitted, that the plaintiff was seised in fee, or of some estate of inheritance, of the impropriate rectory of *Manackan*, and of the tithes of corn and grain arising out of *Tregitho*, excepting as in the bill is excepted ; and said, that he was in 1753, and had been for thirty-nine years before, seised in fee of the said tenement and lands, and had yearly, saving the three last years, corn and grain growing thereon, which he had reaped and carried off ; that particularly in 1753 he had reaped some wheat ; and after fairly setting out the tithes thereof, partly in parish mows, and partly in shocks, and partly as the same was bound up in sheaves, he had carried the same away ; that he had likewise fairly set out the tithes of his barley, by throwing out every tenth sheaf thereof after the same was reaped, cut, and bound into sheaves ; and denied that the manner insisted on by the bill was the true and legal way of setting forth the tithes thereof ; or that he knew of any particular established custom of setting out of tithes of wheat, barley, oats, or other corn or grain growing within the said parish ; though he admitted, that he had set out part of his tithes, both of wheat and barley, saving the tithe of barley in 1752 and 1753, in that manner.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel on both sides, the Court directed the custom to be tried before a special jury ; and the jury, upon full evidence, found the following verdict, viz. " that the usual and accustomed manner of
" setting out tithes of barley and other corn growing within the
" tenement of *Tregitho* is, for the farmer or occupier of the lands
" to cut or reap the said corn, and soon after to bind the same
" into sheaves, and then to put and make up the sheaves so
" bound into mows or cocks, on the lands where the same corn
" grew, to remain for a reasonable time, until such corn shall be
" in a proper plight and condition, and be fit to be carried and
" put into the barn, or other convenient place for preserving
" the same for use ; and when the said mows or cocks of corn
" are so in condition, and fit to be carried in, and at the time of
" carrying off the same from the ground where the same grew
" and

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against
NICHOLAS.

“ and was reaped, every tenth sheaf thereof is and ought to be
“ set out as and for the tithe of such corn.”

The cause now came on for further directions upon the equity reserved ; and upon reading the decree and *postea* ; and hearing counsel for the plaintiff ;

THE COURT ordered the usual and accustomed manner of setting out the tithes of barley and other corn growing within the tenement of *Tregitha*, as found by the verdict, to be established with costs at law and in this court ; and the defendant to forthwith pay one pound, ten shillings, for the tithes of six acres of barley in 1753 growing on the said tenement ; and to account for all the tithes of barley and other corn and grain by him had growing, &c. upon the said tenement since 1753, with subsequent costs to be taxed, with the other costs at law and in equity.

TRIN. TERM,
31. GEO. 2.

BRONNEVAL against BOWER.

Dorsetshire, 7th July 1757.

The landholders of *West Parley*, in *Dorsetshire*, except of the lands called *Dudsbury Farm*, in the hamlet of *Leigh*, pay to the rector, at *Easter*, 3d. a milch cow ; 1d. for every ancient garden ; ½d. for every calf weaned ; the left shoulder of every calf killed for the use of the family ; and 1d. for eggs ; in lieu of the tithes thereof respectively ; but they pay the tithes of firewood in kind.

THE plaintiffs, as owners and occupiers of lands within the parish of *West Parley*, in the county of *Dorset*, except such part thereof as lies within the tithing of *Leigh*, heretofore called *Dudsbury Farm*, on behalf of themselves and the other owners and occupiers of land there, filed their bill against the rector of the parish, stating, that by ancient custom in the parish, except as aforesaid, every owner and occupier of land therein keeping or depasturing one or more milch cows thereon, had yearly and every year, on the feast of *Easter*, or so soon after as lawfully demanded, paid, or ought to have paid, to the rector, or to his lessee, a certain *modus* of one penny for every milch cow so kept and depastured ; and that such *modus* had been, and ought to be, received by the rector or his lessee in lieu of the tithes of the milk of such cow or cows respectively. The bill then stated, that by the like ancient custom there was payable as aforesaid one penny for every ancient garden, in lieu of the tithes of the fruits, herbs, and garden stuff yearly arising therein ; one penny, commonly called *heath smoke*, or *chimney money*, in satisfaction of all the wood, heath, and fuel cut in the parish, and burnt and consumed in the house of such occupier ; one halfpenny for every calf weaned, in lieu of the tithe of such calf ; the left shoulder of every calf fallen in the said parish, and killed by or for such occupier for the use and sustenance of himself and family, immediately after the same is so killed, in lieu of the tithes of such calf ; and one penny by every person keeping poultry, in lieu of the tithe of eggs ; that the said several *moduses* had been duly paid until *Michaelmas* 1752 ; and that those which became due to him since *Easter* 1753 had been tendered, and which he had refused to accept

Th.

The bill therefore prayed, that their aged and infirm witnesses might be examined and inrolled, and the several *modus*es established.

BRONNEVAL
against
BOWER.

The defendant admitted, that the plaintiffs were owners and occupiers of land in the parish, except as in the bill is mentioned; and, denying there were any such *modus*es in the parish as set forth in the bill, insisted on taking his tithes in kind.

The plaintiffs replied; the defendant rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs;

THE COURT dismissed the bill as to the *modus* of one penny in lieu of the tithe of all the wood, heath, and fuel, cut in the parish, except as aforesaid, and burnt and consumed in the house of every occupier therein, with costs.

But as to the several other *modus*es, the Court ordered the validity of them to be tried by a special jury; and on the trial, the jury found a verdict for the plaintiffs.

THE COURT accordingly ordered the said five several customs or customary payments, and every of them, so found by the jury aforesaid, to be severally established and confirmed; and the said defendant to observe the same, and yearly and every year, from time to time, as the same shall respectively become due and payable, to accept the said several customary payments, for and in lieu, payment, and full satisfaction respectively of the tithes of milk of every milch cow yearly fed and depastured within the said parish of *West Parley*, except such part thereof as lies within the tithing of *Leigh*, and heretofore called *Dudsbury Farm*; and of the tithes of the fruit, herbs, and garden stuff, yearly arising or increasing in every ancient garden in the said parish, except as aforesaid; and of the tithe of every calf fallen in the said parish, except as aforesaid, killed by or for the occupier for the use and sustenance of himself and family; and of the tithe of eggs; and that the said defendant do pay to the plaintiff, their costs of this suit, and also their costs at law, to be taxed.

T. PARKER.
H. LEGGE.
S. S. SMYTHE.

KILLETT against BURROW.

Suffolk, 9th July 1757.

TRIN. TERM,
31. GEO. 2.

THE rector of *Bradwell*, in the county of *Suffolk*, claimed all great and small tithes yearly arising in the parish, and particularly the tithes of hay, calves, milk, agistment, or herbage a year in lieu of all tithes whatsoever arising on the *Marsh Lands* in the said parish.

The rector of *Bradwell*, in *Suffolk*, is only entitled to 40s. for the said parish.

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for barren and unprofitable cattle of certain lands part of a marsh,

The defendant said, that *H. Bendish* and others were seized of and entitled to a certain parcel of *marsh ground* in the said parish, containing one hundred and twenty acres; that a *modus* of forty shillings a-year was payable by the occupiers of the said marsh to the rector or his lessee, on the first day of *August* old stile, commonly called *Lammas*, or so soon after as demanded, in lieu of all tithes whatsoever annually arising, renewing, or increasing, off, from, or upon the said marsh grounds; that in the year 1754 he occupied about sixteen acres, part of the said marsh grounds, as tenant at will to the said *H. Bendish*, at nine pounds a-year, until the twenty-fifth of *December* in the said year, when he quitted the same: and he set forth the number of cattle he had depastured thereon; and admitted, that as it had been let to him tithe free, he had not set out his tithes thereof; but he insisted, that the owners of the said marsh lands had tendered the said forty shillings to the plaintiff in lieu of the tithes thereof; and that he had refused to accept of the same as a *modus*; and he tendered him the same by his answer.

The plaintiff replied; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel; and reading the proofs in the cause;

THE COURT ordered an issue to try the *modus* as alledged in the answer.

A trial was accordingly had, and a verdict found for the plaintiff at law; and upon reading the decree and *posse*; and hearing counsel for the defendant;

THE COURT ordered the bill to be dismissed, with costs both at law and in equity.

EASTER TERM
31. GEO. 2.

THE BISHOP OF NORWICH against GRAINGER.

Yorkshire, 17th April 1758.

The impropriator of the parish of *Whitby*, and chapelries of *Fyling*, *Hawsker*, *Uggelbarnby*, *Askdale*, *Aslaby*, and *Dunsley*, in *Yorkshire*, is entitled to the twentieth part of all fish caught in *Robin Hood's Bay* by the fishermen residing in the said parish and chapelries; the tenth part of all fish caught in cobbles; and to 5*l.* per cent. on the value of all fish so caught and sold, either at sea, or out of the said parish.

THE bill stated, that the rectory and parsonage of *Whitby*, with the chapels of *Fyling*, otherwise *Fylingdale*, *Hawsker*, *Uggelbarnby*, *Askdale*, otherwise *Eskdale Side*, *Aslaby*, and *Dunsley*, in the county of *York*, to the said rectory and parsonage united, with all and singular the tithes, oblations, obventions, fruits, profits, rights, and advantages whatsoever to the said rectory, parsonage, or chapels belonging, formerly appropriated to, and part of the possessions of the late monastery or abbey of *Whitby*, vested, upon the dissolution of monasteries, in *Henry the Eighth*, his heirs and successors; that *Henry the Eighth*, by his

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letters patent or otherwise, granted the said rectory, with the appurtenances, to the then *Archbishop of York* and his successors; that the said rectory and tithes, with the appurtenances, were, for many years, held by some of the ancestors of *Hugh Cholmley* on lease from the *Archbishop of York* for twenty-one years; that the said lease was, from time to time, renewed, until *H. Cholmley*, the lessee, neglected, in the year 1742, to renew the same; that thereupon *Launcelot*, then *Archbishop of York*, by indenture dated the second of *November* 1742, demised the same to the plaintiff, who was archdeacon of *York*, to hold to him and his executors, &c. for twenty one years, at a yearly rent therein mentioned; that the said *H. Cholmley's* lease expired on the twelfth of *September* 1748; and that the plaintiff thereby became possessed of the said rectory, and all the tithes and profits thereof; that by indenture dated the twenty-ninth of *July* 1749, the then *Archbishop of York*, upon the plaintiff's surrender of his lease, demised the said rectory, &c. to the plaintiff, his executors, &c. to hold for twenty-one years, subject to the rent therein reserved; that the plaintiff thereby became entitled from the twelfth of *September* 1748 to all the tithes arising therein, or to some satisfaction in lieu thereof, and particularly to all the tithes yearly arising from and out of all manner of fish from time to time during the time aforesaid caught or taken by any person or persons whomsoever using or exercising the trade or business of a fisherman, and living or residing within the said rectory, chapelries, or the titheable places thereof; that the said rectory and chapelries are situate and adjoining to THE SEA; that there is within the said rectory, and in the chapelry of *Fyling*, a place called *Robin Hood's Bay*, in the town of which the defendants had, for many years past, resided, and exercised the trade of fishermen; that the said business had, for time immemorial, been carried on within the said rectory with certain boats called *five men boats*, or other vessels, and with certain other vessels called *cobles*; that they, and all such persons exercising the like business, had immemorially, until the said twelfth of *September* 1748, paid, and, according to ancient usage or custom within the said rectory, ought of right to pay, the tithes of and out of all fish by them caught, had, and taken at sea, to the rector or impropiator of *Whitby*, or his lessee or lessees, tenant or tenants, tithing-men or agents, in manner following (that is to say), that such fishermen had from time to time delivered and paid tithes of, from, and out of all such fish which they had from time to time caught at sea in their *five men boats* or other vessels in the summer season, and brought to and landed at *Robin Hood's Bay*, *Whitby*, or at any other place or places within the said rectory and chapelries, or the precincts or titheable places thereof; that in the tithing thereof the fisherman or fishermen who had caught and landed such fish as aforesaid, had and ought, from time to time for time immemorial, and according to ancient custom

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custom used and observed, first to tell or set out twenty of the fish by him or them so caught or landed ; and that the person or persons who had from time to time been seised or possessed of the said rectory and tithes, or his or their tenant or tenants, lessee or lessees, or some person by him or them, or some of them, employed as a tithing-man to receive and collect such tithes, had, for all the time aforesaid, and according to ancient usage and custom, chosen and taken up, and of right ought to chuse and take up one of the fish so landed, told, and set out ; that afterwards the fisherman or fishermen who caught and landed such fish used and ought to take up the remaining nineteen fish ; that then the fisherman or fishermen begun again to tell or set out twenty more of the said fish, the tithing-man in like manner to chuse and take up one, and then the fisherman or fishermen to take up the remaining nineteen ; and so on till all the fish, so from time to time caught and landed by such fishermen as aforesaid respectively, were tithed. The bill further stated, that as to all fish caught and taken at sea by any fisherman or fishermen living or residing within the said rectory, &c. which they had, from time to time, sold and disposed of to mariners or other persons at sea, or carried to any other place or places out of the said rectory and chapelries, to sell or dispose of, such fishermen ought to have paid to the plaintiff, as they had from time to time for time immemorially paid to all other persons who were seised or possessed of the said rectory and tithes, &c. twelvepence out of every twenty shillings which they received by or from the sale of all such fish so sold or disposed of by them at sea, or in any other place or places out of the said rectory and chapelries as aforesaid. The bill further stated, that for all fish from time to time caught and taken in or upon THE SEA by any fisherman, &c. in any coble, and landed within the said rectory, such fisherman, &c. ought to pay the tithe in kind of all such fish at any time taken in any coble ; that the defendants, before and since the said twelfth of September 1748, lived at *Robin Hood's Bay*, or within some place in the said rectory, and had long before and since that time employed *five men boats* and other vessels in the summer season, and had respectively caught and taken in that time large quantities of fish of all sorts, and of great value, part whereof they had landed at *Robin Hood's Bay*, and elsewhere within the said rectory, and had disposed of other parts to persons at sea, and at *Yarmouth*, and other places not within the said rectory, the tithes of all which the plaintiff became entitled to, and ought to have been paid, according to the several ancient customs and usages of paying tithes of fish before-mentioned ; that notwithstanding that, and the many applications made to the defendants by the plaintiff's agents for inspecting their fish to ascertain the tithe thereof, they had absolutely refused to suffer such inspection, or to comply with such ancient immemorial customs, and set
up

up some pretended compositions in bar of the same ; but that the said pretended compositions were fraudulent, and injurious to his right. The bill therefore prayed, that the defendants might set forth a just account of all the several quantities, numbers, and sorts of fish which they had from time to time respectively caught and taken in their *boats* or other vessels in the summer season, or in their *cobles* in the winter season, and landed at *Robin Hood's Bay*, or at any other place within the said rectory, since the twelfth of *September* 1748, and the values and tithes thereof ; and also a true account of the several sums of money which they, or any of them, had, from time to time, since the time aforesaid, received by the sale of the herrings and other fish sold by them at *Yarmouth*, or any other place not within the said rectory ; and how much the value of the tithe amounted to ; and in what manner they computed the same ; and whether any satisfaction, and what, had been made to the plaintiff or his agents for the same ; or any and what part thereof ; and that proper directions might be given by the court for the payment of such tithes for the future.

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The defendants said, that they believed that the rectory of *Whitby*, with the several chapels, and all the tithes, oblations, &c. were formerly appropriated to, and part of the possessions of the late dissolved monastery or abbey of *Whitby* ; that upon the dissolution thereof, the same became vested in *Henry the Eighth*, his heirs and successors, who might grant the same to the then *Archbishop of York* and his successors ; and that the same had been held for many years by the *Cholmley* family, as is stated in the bill ; and they admitted, that the plaintiff was, by virtue of a lease dated the twelfth of *September* 1748, well entitled to the said rectory and tithes ; but they denied that he was particularly entitled to the tithes arising from and out of all manner of fish caught or taken by any persons whomsoever using the trade or business of fishermen, and residing within the said rectory. They also admitted, that the said rectory and chapelries of *Filing* and *Dunsley* were situate near THE SEA ; that the town of *Robin Hood's Bay* was within the same ; that most of the defendants lived there, and for many years past had been employed as fishermen in *five men boats* and *cobles* ; and that the trade of *fishing* had been carried on in the said bay ; but whether for time immemorial they knew not ; but they denied that all fishermen residing in the said parish had immemorially, until the twelfth of *September* 1748, paid, or ought to pay the tithes of all fish by them caught at sea to the rector or impropiator of the said rectory, as in the bill is alledged. They said, that within forty years last past the defendants and certain other persons had, in their own wrong, suffered the tithes of cod, ling, and hollibuts to be taken in *Filing* by the agents of *H. Cholmley*, the lord of the manor, in the proportion of one out of twenty ; and that if there were not twenty, then no tithe fish was paid ;

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and that, except of cod, ling, and hollibuts, no tithes in kind of any species of fish whatsoever had ever been paid by any fishermen residing in the said rectory. They also denied, that there was any ancient usage in the said rectory to pay twelpence out of every twenty shillings to the lessee of such rectory from the sale of all fish caught in the summer season, and sold at sea, or in any other place out of the said rectory. But they admitted, that they had, at divers times within thirty years last past, and before the twelfth of September 1748, submitted to pay *H. Cholmley* three guineas for every boat, and seven shillings and sixpence for every coble, yearly; and averred, that they had paid the same more out of apprehension of being deprived of divers liberties, &c. which they enjoyed in *Robin Hood's Bay* under him and his ancestors, lords of the manor of *Filing*, than of right. They also said, that although they had been advised that no tithes of fish could be demanded of common right, and denied the plaintiff's right thereto since the twelfth of September 1748, yet for peace's sake, they had offered his agents yearly one guinea for every boat, and seven shillings and sixpence for every coble; that the plaintiff had refused the said offer, and demanded six guineas yearly, and seven shillings and sixpence for every coble; but that they conceiving the said demand to be very unreasonable, and not being able to afford so large a sum, they had refused to comply with his demand; that they had, notwithstanding, permitted the plaintiff's tithing-man to inspect their boats and cobs, though they were advised and convinced that no person had a right so to do. They admitted, that they had not paid the plaintiff any tithe for their fish caught; and said, that they had kept no account of them, except what they commonly called a *garth angle account*, which was by notching upon a small pole whereon a hook was fixed for the counting of fish by scores; but that, as they had accounted with their men every week, the *garth angle*, they believed, was afterwards destroyed; but that they had set forth an account of the number, according to the best of their recollection.

The plaintiff replied; the defendants rejoined; and witnesses were examined on the plaintiff's behalf only. Upon hearing counsel for the plaintiff, no counsel appearing for the defendants; and reading an affidavit of service of *subpoena*, &c.;

THE COURT ordered the several ancient customs and usages of rendering and paying the tithes of fish caught and taken by fishermen living or residing at *Robin Hood's Bay*, or at any other place or places within the rectory of *Whitby*, or the titheable places thereof, to be perpetuated and established, as set forth and demanded by the bill; and the said defendants to respectively account with and satisfy the plaintiff the value of the twentieth part of all such fish as had been taken and caught by them, or any of them, in their *five men boats* or other vessels in the summer season, and landed within the rectory since the twelfth

of

of September 1748, according to the ancient usage and custom, as demanded by the bill; and also to account in like manner for all such sum and sums of money received by them, and every of them, from the sale of herrings and other fish caught by them in their *five men boats* or other vessels, and sold or disposed of at *Yarmouth*, or at other places not within the rectory, and make him a satisfaction for the tithes thereof (to wit), at the rate of twelpence for every twenty shillings or pound so received by them from the sale of such fish, since the said twelfth of September 1748, according to the ancient immemorial usage and custom as stated by the bill; and to respectively account for the tithe of all such tithe fish as had been caught and taken by them, or any of them, in their *cobles*, since the said twelfth of September 1748, as demanded by the said bill; and pay the plaintiff his costs of this suit, to be taxed; the decree to be binding upon all the defendants, unless cause, &c.

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On the first of June 1758, no cause being shewn by the defendants, the Court ordered the decree to be made absolute; and the deputy, in pursuance thereof, made his report, dated the fourteenth of February 1759, and no one attending for the defendants, the said decree and report, no exceptions having been taken to the same, and no counsel appearing for the defendants, were, on the twenty-third of February 1759, ratified and confirmed with costs.

PARKER, *Chief Baron*,
SMYTHE, *Baron*,
ADAMS, *Baron*.

JOPE against HELYAR.

Cornwall, 22d February 1759.

HILARY TERM
32. GEO. 2.

THE rector of *Saint Melyon*, in the county of *Cornwall*, claimed the tithes, both great and small, of a farm occupied by the defendant and her late brother since 1743, called *the Barton of Newton*, in the said parish.

The rector of *Sr. Melyon*, in *Cornwall*, is intitled to the great and small tithes arising on the farm called *the Barton of Newton*.

The defendant admitted that the plaintiff was rector, &c. and entitled to the tithes of the rectory; and that she and her brother had occupied the said barton or farm of *Newton* for ten years past; but said, that the said *Barton of Newton*, and the lands thereto belonging, had been parcel of the possessions of the priory of *Bodmin*, in the said county (being one of the greater monasteries), at the time of the dissolution thereof, and, at the time of the dissolution, were held and enjoyed by the prior and convent of the said priory, free and exempt from the payment of tithes; that by the statute of 31. Hen. 8. the same ought still to be held and enjoyed free and exempt from the payment of tithes in the same manner as the said prior and convent had held and

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enjoyed the same ; that no tithes had ever been paid for the said farm and lands ; and therefore she insisted, that the said farm was exempted from the payment of tithes, and the plaintiff not entitled to any discovery of the titheable matters arising therefrom.

The plaintiff replied ; the defendant rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading the depositions of several witnesses ; an order of this court, dated the twelfth of *February* instant, to prove exhibits ; an indenture, dated the eighth of *October*, in the thirteenth year of *Queen Elizabeth*, between *W. Jenkins* and *Peter Coryton* ; a licence or grant from *J. Bresewood*, substitute of the *Bishop of Exeter*, dated the twenty-third of *October* 1540, to *P. Coryton* and his wife to have their sacraments in their chapel ; a terrier of the parsonage and glebe lands of *Saint Melyon*, dated 1726 ; another, signed by the minister, officers, and other inhabitants of the parish ; a grant from *Reynold de Ferrers* to *John*, the son of *Saringod do Crenabyar*, in the twenty-first year of *King Edward* ; a lease, dated the twenty-fourth of *June* 1734, between *Sir John Coryton* and the plaintiff ; two indentures, one dated the ninth of *April*, and the other the tenth, in the sixth year of *King Charles*, between *Richard*, *Lord Roberts*, and *William Rous* ; the will of *Thomas Littleton*, dated the thirty-first of *January*, in the twentieth year of *Queen Elizabeth* ; the visitation books in THE HERALDS OFFICE for the counties of *Cornwall*, *Devon*, and others in 1513 and 1620 ; a map of *Cornwall* ; an inrollment of a grant in the treasurer's remembrancer's office, in the second part of originals of the first year of *Edward the Sixth*, from the said king to *Edward*, the Duke of *Somerset*, of lands in *Lanbidrock*, *Newton*, *Trefry*, *Colyersford*, *Cosmadrake*, *Trevane*, and *Kingwoodhall*, in the said county ; the ministers accounts in the augmentation office for the thirtieth and thirty-first years of *King Henry the Eighth* and the fourth year of *Edward the Sixth*, of the possessions of the late dissolved priory of *Bodmin* ; a commission under THE GREAT SEAL ; an inquisition thereon taken in the fifteenth year of the said *King Henry*, on the death of *Richard Coryton* ; a paper writing, purporting to be a true copy of an inscription on an ancient monument in the church of *Saint Melyon*, erected in memory of *Peter Coryton, Esq.* ; the answers ; and on long debate ;

THE COURT ordered the defendant to account for the tithes of the said lands, as well for the time she and her late brother had been in possession thereof before his death, as for the times she had been in possession thereof since his death.

THOMAS

THOMAS *against* PRICE.TRIN. TERM,
33. GEO. 2.*Glamorganshire, 12th July 1759.*

THE bill stated, that the plaintiff was, in the year 1742, lawfully presented to the vicarage of *Cadoxton near Neath*, in the county of *Glamorgan*, and was entitled, as vicar thereof, to all the vicarial tithes of what kind soever, arising in the parish, or to some pecuniary satisfaction in lieu thereof, and particularly to the tithe of the toll arising from all mills therein; that the defendants *Price* and *Williams* had, from the first of *May 1746*, occupied certain *water corn grist mills* in the said parish, either in their own right, or as tenants to other persons, at which mills they had yearly ground great quantities of corn, grain, and malt, to the tithe of the toll of which corn so ground at the said mills he was legally entitled; that he had accordingly applied to the defendants for a satisfaction for the said tithes; that the defendants pretended that there had been an ancient mill in the parish which was exempt from the payment of tithes, and which through length of time had decayed, and been taken down, and new mills erected thereon with the old materials; and that therefore no tithes were by law due for the same. But he insisted, on the contrary, that the mills for which he now demanded tithes had been erected on a part of the parish where no ancient mill had ever stood, for that they were erected on a new channel or current of water, which had been diverted from its ancient course into a new cut made for some private purposes of the owner of the soil on which the same was made; that they also pretended that there were no mills in the parish but what were exempt from the payment of tithes; but that, on the contrary, there were several ancient mills therein which did pay tithes, or some recompence in lieu thereof. The bill therefore prayed, that the plaintiff might have a discovery of the quantities of corn and malt ground at the said mills in each year; the value of the toll and mulcture thereof; and that the defendants might be decreed to come to a just and fair account for the value of the said tithes, and pay to him what should appear to be justly due on such account.

The vicar of *Cadoxton, near Neath*, claims of the defendants *Rice* and *Williams* the tithes of a *water corn mill*.

The defendant *Williams* admitted, that the plaintiff was vicar of the parish, and entitled to all small and vicarial tithes yearly arising therein, or to some pecuniary satisfaction in lieu thereof; but whether he was entitled to the tithe of the toll arising from all mills, and particularly from the new-erected mill, he could not say. He said, that the lordship of *Cadoxton*, and the several messuages and lands belonging thereto, together with the rectory

The defendant *Williams* says, that *H. Stanley, G. Rice, and H. Compton*, were seized in fee of the manor of *Cadoxton*; that the said manor

is tithes free; that on a brook called *Clydach*, parcel of the manor, there was an ancient mill exempted from tithes; that the defendant *Price* as the lessee of *Stanley*, and himself as the lessee of *Rice* and *Compton*, were possessed of the said ancient mill; and that they pulled it down, and with some part of its materials erected another mill on the stream of *Clydach Brook*, and on lands which are parcel of the manor.

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that they continued to hold the *New Mill*, and divided the profits thereof according to their respective shares therein ;

that *G. Rice* in his own right ; he as lessee of *Compton* ; and *Price* as lessee of *Stanley* ; having demised the said mill to the other defendants, are to be considered as the landlords thereof ; that if any tithe is due therefrom, it ought to be paid by the miller out of his neat profits, and not out of their rent ;

and advowson of the parish-church of *Cadoxton*, had been anciently held and enjoyed by, and were part of the possessions of the abbots of *Neath Abbey*, and their successors, as lords of the manor of *Cadoxton near Neath* ; that the said manor or lordship was now vested in *H. Stanley*, *George Rice*, and *H. Compton* ; that the *Earl of Brook* was entitled to the rectory and advowson of the parish-church, and to such tithes as belong to the impropriate rector thereof ; that the said *G. Rice* in his own right, the defendant *M. Price* as lessee to *H. Stanley*, and this defendant *T. Williams* as lessee to *H. Compton*, were seised of and entitled to the rents and profits of the several messuages and lands in the parish of *Cadoxton*, which were part and parcel of the lordship of *Cadoxton near Neath*, and were parcel of the possessions of the said abbots of *Neath Abbey* and their successors ; that on part of the possessions of the said abbots, on a certain brook called *Clydach*, in the said parish, there was an ancient mill, which, from time beyond the memory of man, had been free, quit, and exempt from tithes ; that the defendant *M. Price*, as lessee of *Anne Stanley*, whose estate therein *H. Stanley* now had, and *T. Williams*, the father of this defendant, who was then the lessee of *H. Compton* and *G. Rice*, being possessed of the said ancient mill, as parcel of the estate which heretofore belonged to the said abbey of *Neath*, did, in the year 1740, pull down the said ancient mill, and with some part of the materials thereof erect and build another mill on the stream of the said brook, and on lands which were heretofore part of the possessions of the said abbots, and which for time immemorial had been free and exempt from the payment of tithe ; that the defendant *M. Price*, and *J. Williams* the father of this defendant, having built such new mill, this defendant and the said owners of it permitted the other defendants to hold the said new erected mill during several years as tenants to them, the profits of which were payable in shares, as in the said answer is mentioned ; that he had not at any time heretofore occupied any mills whatsoever in the parish, save the said mill ; and he admitted, that he had never paid the plaintiff for the toll arising therefrom for any time since he became possessed of the profits thereof ; but he insisted, that he, as lessee of the estate of *H. Compton*, *G. Rice*, and *M. Price*, are landlords of the said mill ; and that no tithes whatever are due by any right, usage, or custom within the parish, from any rents paid to them as landlords ; and that the same so paid to them ought to be esteemed as an annual expence issuing from the profits of the mill ; and that if any tithe is due from the said mill to the plaintiff, it is due from the miller who occupies the same as a personal tithe only, to be paid out of the neat profits made by the miller after all deductions whatsoever ; and therefore he was not, as landlord, obliged to set forth the corn, grain, or malt paid or delivered

delivered by the said respective millers, but that the plaintiff should resort for satisfaction therein to the respective millers who were the occupiers thereof. He further said, that if the new erected mills should, notwithstanding their having been erected with part of the same materials, and on the stream of the same brook as the ancient mill, and on land exempt from the payment of tithes, be subject and liable to the payment of tithes, yet that no tithe ought to be paid by new erected mills until such time as they had fully cleared the expence of building the same; and that the same tithe, if any was due thereon, should be paid as a personal tithe by the occupier resident in the parish; and he averred, that he had never resided there, but in the town of *Neath*; and that he was in no other manner concerned in the said mills than as landlord to two third parts thereof.

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against
PRICE.

and, at any rate, if considered as a new mill, no tithes thereof ought to be paid until its profits have cleared the expences of its erection.

The defendant *M. Price*, as lessee to the other third part of the said mills, put in the like answer, except that he further said that he did not live in the parish till the year 1753; and that he had yearly since that time paid to the plaintiff one guinea, which he had accepted in lieu of all his, the said defendant's, vicarial tithes in the said parish; and insisted, that he was not liable to any personal tithe whatever arising within the said parish until that year, when he came to dwell therein.

The defendant *Price*, as lessee of a third part of the mill, says, he did not reside in the parish, and that the tithe of mills is a personal tithe.

The other defendants, who were tenants and servants to the other defendants, put in the like answers; and insisted, that no tithe was due from them till the mills had fully cleared all charges and expences laid out in the erecting thereof; that if there was any tithe due for the toll of the said mills, it was either to be esteemed a predial tithe, and due to the improper rector of the parish of *Cadoxton*, or else a personal tithe, and of right due to the rector or vicar of the parish where the defendants inhabited and dwelt during the time they rented and occupied the said mills.

The other defendants say, that it is a predial tithe.

The plaintiff replied to all the answers, except that of the defendant *W. Thomas*; the defendants rejoined; and witnesses were examined on both sides; and upon hearing counsel;

The cause heard.

The defendant's counsel objected, that *G. Rice*, one of the owners of the mill, was not a party before the court in this cause; but on hearing the plaintiff's counsel thereupon, the Court over-ruled the objection.

The objection that *G. Rice* is not a party over-ruled.

And on reading the depositions taken on the plaintiff's behalf; and the answer of the defendant *Williams*; and on debate of the matter;

The evidence read.

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against
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The Court declares the vicar entitled to the tenth part of the clear profits as a personal tithe. The defendants ordered to account accordingly. The bill dismissed as against the defendant's servant.

Exceptions taken to the report, and over-ruled. The report confirmed.

THE COURT declared, that the plaintiff was entitled to the tithe of the toll of the said new erected mill in the nature of a personal tithe only, that is to say, the tenth part of the clear profits arising from corn, grain, and malt ground in the said mill, over and above all incident charges; AND THEREUPON ORDERED the several defendants to severally account with the plaintiff for the tithe of the profits of the mill, after an allowance of all incident charges, and pay the same to the plaintiff, with his costs of suit to be taxed; and the bill to be dismissed as against *W. Thomas* the servant, with forty shillings costs, to be paid over to the plaintiff by the other defendants.

On the fifteenth of *November 1762*, the defendant's counsel prayed time to file exceptions to the report; and the hearing being adjourned, the defendants filed exceptions accordingly; but on the twenty-fifth of *November 1762*, upon hearing counsel, and reading the decree, report, and exceptions, the Court ordered the exceptions to be over-ruled; the report to be ratified and confirmed; and the defendants to pay their several shares reported due, in the proportion as in the said report is mentioned, for the tithes of the profits of the said mill, with subsequent costs.

PARKER, *Chief Baron*,
ADAMS, *Baron*.

HILARY TERM
33. GEO. 2.

DEWDNEY against BERTIE.

Devonshire, 21st February 1760.

The rector of *Kenn*, in *Devonshire*, is entitled to the tithes of milk in kind.

THE plaintiffs, as owners and occupiers of lands and tenements in the parish of *Kenn*, in the county of *Devon*, filed their bill to establish a *modus* of fourpence a cow yearly, in lieu of tithe milk, as appeared by a terrier of the parsonage house of the said rectory and the glebes and dues thereto belonging, entered in the principal registry of the *Bishop of Exeter*, in whose diocese the said parish is, and which terrier is dated 1680, and signed by *W. Gould*, then rector, by the bishop's command, and attested by *G. Harrison*, the churchwarden, in which it is said, and returned by the then rector, that he knows of no custom in the said parish but one groat for the milk of a cow.

The rector denied the said *modus*, and insisted on the tithes of milk in kind.

THE COURT, on reading the terrier in the bill mentioned, directed an issue to try the *modus*.

A trial was accordingly had; and a verdict was given for the defendant that there was no such custom.

THE

THE COURT ordered the bill to be dismissed, with costs both at law and in this court.

DEWDNEY
against
BERTIE.

THE EARL OF EFFINGHAM *against* TURNER.

TRIN. TERM,
34. GEO. 2.

Yorkshire, 2d July 1760.

THE plaintiff, as impropiator of *Rotherham*, in the county of *York*, claimed all manner of tithes, both great and small, yearly arising in the rectory, except certain small tithes or customary payments belonging to the vicar, as set forth in the bill; and stated, that the defendants had been, for several years last past, respectively occupiers of land lying in the township of *Kimberworth*, in the said parish, but not within certain districts in the said townships, called *Thorpe* and *Scholes*, or either of them; that in the year 1755 they had growing thereon wheat, rye, barley, oats, pease, and beans, which they had reaped and carried away, without setting forth the tithes thereof, or making the plaintiff any satisfaction for the same; that by an ancient custom in the township, except in the said districts of *Thorpe* and *Scholes*, every occupier of lands in the said township, except as aforesaid, having any sort of corn arising therefrom, ought to set out the tithes of such corn by every tenth shock or stook, each stook or shock containing ten sheaves; that the defendants, although their lands did not lie in the district of *Thorpe* and *Scholes*, refused to comply therewith, or to make any discovery of their titheable matters. The bill therefore prayed, that they might be decreed to account with the plaintiff touching the several matters aforesaid, and pay him what should appear due to him from them respectively on the balance of such account.

The occupiers of lands lying in the township of *Kimberworth*, and out of the hamlets of *Thorpe* and *Scholes*, in the parish of *Rotherham*, in *Yorkshire*, are, by custom, to set out their tithes of corn, pease, and beans, by every tenth shock or stook, each stook or stook containing ten sheaves.

The defendants admitted, that the vicar of *Rotherham* was entitled to such customary payments in respect of small tithes, as stated in the bill; that the plaintiff was entitled to all tithes yearly arising in the several townships of *Rotherham* and *Kimberworth*, except such tithes as the said vicar was entitled to; that all tithes within the township of *Kimberworth*, except certain small tithes leased to *W. Wilkinfon*, and those in respect of which yearly payments had been made to the vicar, had been, from time to time, collected or received by the plaintiff until the year 1754; that they were occupiers of several lands within the township of *Kimberworth* and parish of *Rotherham*, which did not lie within either of the hamlets of *Thorpe* or *Scholes*; and that they had, before the year 1755, great quantities of corn and other grain yearly growing thereon; but they insisted, that on reaping the same they had duly set out the tithe thereof, or made satisfaction to the plaintiff for the same, and therefore had kept no account thereof; that they had set out the tithe thereof in kind, by setting apart every tenth sheaf or

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THE EARL OF
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against
TURNER.

reap of the whole thereof for the tithe, and given the plaintiff notice to take the same away ; and that he neglecting so to do, the same either rotted, or was stolen away ; that the impropriator of the parish had constantly, or most commonly, accepted a composition at some certain rate an acre for the tithe of corn growing on the greatest part of the lands in the township of *Kimberworth* ; that there was not, as they knew of, any ancient custom that the occupiers of lands in the township of *Kimberworth*, and not within *Masbrough, Thorpe*, and *Scholes*, having corn arising from their lands, should set out the tithe of any part thereof by every tenth shock, such shock containing ten, or any other number of sheaves, or other than as aforesaid ; and they insisted, that they were not obliged to set out their tithe corn in shocks, or otherwise than in sheaves or reaps.

The plaintiff replied ; the defendants rejoined ; and witnesses were examined on both sides ; and upon hearing counsel ; and reading the depositions of several witnesses on both sides ; and all the defendants by their counsel declining an issue at law for the trial of the custom alledged ;

THE COURT ordered the defendants to account for their respective tithes of wheat, rye, barley, oats, pease, and beans, which arose from their respective lands within the township of *Kimberworth* for the said year, pursuant and according to the custom stated and set forth in the bill, with costs of this suit to be taxed.

T. PARKER.
S. S. SMYTHE.
RICH. ADAMS.

TRIN. TERM,
31. GEO. 2.

GEORGE against OUTRAM.

Derbyshire, 9th July 1757.

The rector of
Chesterfield, in
Derbyshire, has
the right of no-
minating a cu-
rate to the cha-
pel of *Brampton*,
in the said
parish.

THE bill stated, that the chapelry of *Brampton*, in the rectory of *Chesterfield*, in the county of *Derby*, being vacant, the plaintiff *Bowman* was, on the twenty-eighth of *August* 1752, nominated thereto by the plaintiff *George*, as appropriator of the rectory of *Chesterfield*, as he had a right to do ; that on the first of *September* then next following he was licensed by the *Bishop of Litchfield and Coventry* ; that he thereby became entitled to the several tithes and *moduses* in the bill mentioned, and also to some land, together with a mansion-house, lying and being within the chapelry ; and that the premises had been immemorially enjoyed by the curates of the said chapelry ; that the said curacy having been vacant several years, the said bishop granted the same in sequestration to one *Seth Ellis*, now deceased ; that on his death, the defendant *Seth Ellis* his son got into, and had ever since been in possession of the said mansion-house and lands ; that he

and

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against
OUTRAM.

and the other defendants had ever since taken and received the tithes arising within the said chapelry, and converted the same to their own use, although they well knew that the said *Bowman* in right of his nomination, or the said *George* as rector of the parish, was entitled thereto. The bill therefore prayed, that the defendants might account with and satisfy the plaintiffs, or one of them, for the rents and profits of the mansion-house, lands, and tithes, taken and received by them since the death of *Seth Ellis* the father.

The defendants *Outram* and *Middleton* said, that the chapel of *Brampton* was a very ancient building; that it was parochial, and time out of mind had been endowed with a mansion-house, glebe lands, and tithes, as in their answer mentioned; that the inhabitants of the chapelry were well entitled, on every vacancy of the curacy of the chapelry, by the voice of the major part of such of the inhabitants as should assemble in vestry for that purpose to nominate and appoint such person as they shall think fit to perform divine service and preach in the chapel; that the inhabitants are obliged to keep, and time out of mind had kept the chapel and chancel thereof in repair; and that such person so nominated by them, being licensed by the *Bishop of Litchfield and Coventry*, had a right to perform divine service, and was entitled to enjoy the mansion-house, lands, tithes, and *moduses* in their answer mentioned; and they set forth the names of several persons who had been accordingly nominated curates there; the times of their nomination; and averred, that they had enjoyed the mansion-house, lands, and received the tithes till the time of their respective deaths; that on the death of *S. Ellis*, father of the defendant *Ellis*, the defendant was nominated by a majority of the inhabitants, but that the right of nomination to the chapelry having been some time past in dispute, the bishop refused to license him; that he had notwithstanding enjoyed the mansion-house and lands, and received such of the tithes as could be got in; and that he had performed divine service in the chapel until he was prohibited by the bishop's monition; that the plaintiff *George* did, about the time mentioned in the bill, nominate *Bowman* to be curate of the chapel, and that he was licensed by the bishop to preach in his diocese; but they denied that *Bowman* had, by virtue thereof, any right to the house, lands, or tithes, he not being duly nominated to the chapelry; for that the deans of *Lincoln* or rectors of the parish never had any right to nominate a curate to the chapel; and they set forth what sums of money they had received in lieu of tithes, and what titheable matters had arisen in the chapelry, and acknowledged that they had refused to account for the same with the plaintiff.

The defendant *S. Ellis* said much to the same purpose as the other defendants; and averred, that on the death of his father he

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against
OUTRAM.

was duly nominated by a majority of the inhabitants to the curacy ; and insisted that he was thereby entitled to the house, lands, and tithes, although not licensed by the bishop ; and that the plaintiffs had no right thereto, or to any account thereof.

The plaintiffs replied ; the defendants rejoined ; but before any further proceedings were had, the plaintiff *George* died, as also the defendant *Middleton*, whereby the proceedings became abated ; but *Bowman* and the other two defendants examined their witnesses ; and the cause, being duly revived pursuant to an order of the eleventh of *June* last, came on to be heard the ninth of *July* 1757, when, upon hearing counsel for all parties,

THE COURT directed an issue to try, before a special jury, “ Whether, upon the vacancy of the curacy of the chapelry of *Brampton*, by death or otherwise, the rector of *Chesterfield* for the time being hath a right to nominate a proper person to be “ curate of the said chapel ? ”

On the sixth of *December* 1758, upon hearing the plaintiff’s counsel ; reading the *posita* ; and hearing counsel for the defendant ;

THE COURT ordered the defendant *Ellis* to deliver up to *Bowman* or his assigns the house and glebe lands, with their appurtenances, belonging to the chapelry of *Brampton*, and, with the defendant *Outram*, to account for the profits they had received from the death of *Ellis*’s father, and also for the value of the house and glebe lands during the said time ; the deputy to take the account, and to make reasonable allowance to *Ellis* for serving the cure ; the said defendants to be examined touching the profits they or either of them had made or received of the chapelry, house, and glebe since the time of putting in the answer ; the plaintiffs to pay the defendant *Green* his costs according to the course of the court, and to have them repaid by *Ellis* and *Outram*, who are also to pay the plaintiffs their costs at law and in equity.

A
T A B L E
OF THE
C O N T E N T S
OF
THE SECOND VOLUME.

A.

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2. The two ancient messuages called *Gartswood Hall* and *Byrn Hall*, in *Ashton*, in *Makersfield*, in the said parish of *Winwick*, pay a *modus* of one pound six shillings and eightpence, in lieu of tithe hay, small tithes, and *Easter offerings* yearly arising thereon, *Finch v. Goddard*, 223
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WISBEACH.

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4. A *modus* to pay three shillings and fourpence a-year at *Easter*, in lieu of the tithe wool of every score sheep or lambs shorn out of the parish, disallowed, *Phillips v. Symes*, 229
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